

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

UNITED STATES OF AMERICA

v.

CRIMINAL CASE NO.
AMD-04-029

WILLIE MITCHELL,
SHELTON HARRIS,
SHELLY WAYNE MARTIN,
SHAWN GARDNER,

Defendants

VOLUME XXVI OF XXXVII
Monday, November 17, 2008
Baltimore, Maryland

Before: Honorable Andre M. Davis, Judge
And a Jury

Appearances:

On Behalf of the Government:
Robert Harding, Esquire
Michael Hanlon, Esquire
On Behalf of Defendant Mitchell:
Laura Kelsey Rhodes, Esquire
Michael E. Lawlor, Esquire
On Behalf of Defendant Harris:
Gerard P. Martin, Esquire
Paul Flannery, Esquire
On Behalf of Defendant Martin:
Thomas L. Crowe, Esquire
James G. Pyne, Esquire
On Behalf of Defendant Gardner:
Adam H. Kurland, Esquire
Barry Coburn, Esquire

Reported by:
Mary M. Zajac, RPR
Room 5515, U.S. Courthouse
101 West Lombard Street
Baltimore, Maryland 21201

1 (Proceedings at 9:40 a.m.)

2 THE COURT: I hope everyone is well. Ms. Rhodes, I
3 spoke to the court administrator at the Immigration Court.

4 MS. RHODES: Thank you very much, Your Honor. I find
5 them hard to reach.

6 THE COURT: Yeah. It's like a three minute thing you
7 got to go through on the phone before a human being comes on.

8 I've been flooded with e-mails and filings and cc'd on
9 correspondence among counsel. So I'm happy to know that you all
10 have been busy. I think we're still waiting for one juror. Is
11 that right, Ms. Arrington?

12 THE CLERK: Yes, sir.

13 THE COURT: So what do you need a decision on? Good
14 morning, Mr. Kurland.

15 MR. COBURN: Good morning, Your Honor. I'm responsible
16 for a lot of that flooding that Your Honor referred to. So I
17 wanted to thank you again for your patience.

18 THE COURT: Did you e-mail me from an airplane last
19 week?

20 MR. COBURN: Actually --

21 THE COURT: You were on American? Is it American
22 that --

23 MR. COBURN: No, it's a thing I have on my computer
24 where I can write them and then as soon I get off the plane, they
25 all send simultaneously.

1 THE COURT: Okay. So you didn't actually e-mail from
2 the plane?

3 MR. COBURN: Just wrote it.

4 THE COURT: I understand Lufthansa used to have
5 in-flight service and they didn't make enough money on it so they
6 canceled it. But I used it a few times in Europe. But
7 apparently, the cost is such now that they're going to be able to
8 provide it and make some money on it for people like you.

9 MR. COBURN: Well, you know what's going to happen,
10 Your Honor, is once there's internet on the airplanes,
11 everybody's going to be able to talk on the phone. So everyone's
12 going to be talking simultaneously.

13 THE COURT: I understand they are actually doing that
14 in some places around the world. The technology marches on. So
15 what's your issues? Is it this witness, Ms. Tyiesha --

16 MR. COBURN: That's probably the most urgent thing,
17 Your Honor.

18 THE COURT: Have you been able to reach a stipulation
19 with the government?

20 MR. COBURN: The government is not inclined to
21 stipulate. And, of course, I understand their perspective on
22 that.

23 THE COURT: What is it that you want her to be able to
24 come in and say?

25 MR. COBURN: I have a statement from her. She

1 actually, she would sort of amplify on the statement she gave to
2 the police.

3 THE COURT: To what effect?

4 MR. COBURN: She would say that she was out there at
5 the same time as Andrea Smith and some other kids, and that two
6 people came down the stairs, that they did not come
7 simultaneously. That there was one person who came down first
8 and ran, just walked down, ran down the stairs, I think she would
9 say ran, and then just, just ran off in some direction and
10 disappeared.

11 Then the second person, who she said was wearing a
12 baseball cap, came down the stairs, walked over to the victim and
13 shot.

14 THE COURT: That's it?

15 MR. COBURN: That's it. So in other words, it implies,
16 I mean, it's our thesis, obviously, is that the first person
17 coming down the stairs is, that Mr. Gardner is not the shooter.
18 Let me put it that way. And --

19 THE COURT: The government doesn't contend that Mr.
20 Gardner is the shooter, does it?

21 MR. COBURN: But they do say that both of them were
22 there. That they both walk over when one of them fires the
23 shots.

24 THE COURT: So you really want me -- how old is she?

25 MR. COBURN: I think she's 17. I don't want this at

1 all, Your Honor.

2 THE COURT: Well, you got to make the call. Do you
3 want me to arrest her or not?

4 MR. COBURN: Would it be possible -- I don't know if
5 this is appropriate or within the realm of possibility at all --
6 if somebody from Your Honor's chambers called that phone number?

7 THE COURT: No. No. I'm not going, I'm not going to
8 do half a loaf. You're going to have to decide whether you want
9 an arrest warrant and you want me to send the marshals out to
10 pick her up or you're going to forego it.

11 Frankly, you haven't asked me, but my opinion is its of
12 no consequence. It just wouldn't, it's not reasonably likely to
13 lead a juror to conclude on the basis of that proffer that Mr.
14 Gardner didn't aid and abet. But it's your call.

15 MR. COBURN: Well, I appreciate that very much, Your
16 Honor. Is it possible for me to just consult with Mr. Kurland
17 about it?

18 THE COURT: Of course. What other issues do you have
19 while you're at the lectern?

20 MR. COBURN: Well, of course, there is the Darryl Bacon
21 issue, and the issue of Adina Schwartz, the professor at John
22 Jay, the firearms person.

23 THE COURT: On Darryl Bacon, he's here? Or will be
24 here?

25 MR. HARDING: Your Honor, he hasn't shown up yet. And

1 it's possible that he will show up. But the agent has been
2 looking for him as recently as this morning.

3 THE COURT: I thought the agent actually located him
4 last week.

5 MR. HARDING: Yes. He located him over the weekend and
6 spoke to him. And that's why we expect him here. But he's not
7 here. And so if he's not here relatively soon, we think that the
8 court might consider the idea of asking for a bench warrant on
9 behalf of the defense. He's still a defense witness.

10 THE COURT: Right.

11 MR. HARDING: But in order to get the marshals
12 assisting Agent Klas in locating him, it might be a good thing to
13 do.

14 THE COURT: All right. Now, once again, Mr. Kurland --

15 MR. COBURN: Coburn, Your Honor.

16 THE COURT: -- Mr. Coburn, do you have, apart from
17 impeaching Mr. Bacon with that letter, do you have any hope or
18 expectation of eliciting affirmative probative evidence from him?

19 MR. COBURN: Our position, Your Honor, is that the
20 letter, what he states in the letter is affirmative, probative
21 evidence, which is not, it's not just a question of cutting down
22 his credibility, but it is rather admissible, probative,
23 affirmative evidence.

24 THE COURT: On what basis could the letter be
25 admissible for anything other than impeachment?

1 MR. COBURN: It's, and I wish I had, you know, kind of
2 sat down and done more comprehensive research about the hearsay
3 issues over the weekend. But I mean, it might be a present
4 sentence impression. That's what I said in one of my submission
5 that I thought it could be. But regardless, I think it has
6 indicia of reliability.

7 THE COURT: But wait a second. As I understand the
8 letter, it's kind of like a love letter in which he basically
9 says, you know, I respect you, I love you, you're my guy, I'm
10 doing well, I hope you're doing well, I will never forget all the
11 things you've done for me. They put pressure on me but I didn't
12 really know anything. And let's stay in touch.

13 MR. COBURN: Well, the fact that he says "I don't know
14 anything" and the fact that he's basically saying --

15 THE COURT: But he don't know anything about what?

16 MR. COBURN: Well, anything of value.

17 THE COURT: He doesn't say, I know you didn't commit
18 that Spence murder.

19 MR. COBURN: Not explicitly.

20 THE COURT: Well, he doesn't even say it implicitly.
21 He just --

22 MR. COBURN: Well, my understanding is it's written at
23 a time when Mr. Gardner's already been convicted.

24 THE COURT: Did he testify in the state trial?

25 MR. COBURN: Bacon?

1 THE COURT: Yes.

2 MR. COBURN: I don't think so.

3 THE COURT: Okay. So what is he contradicting?

4 MR. COBURN: Well, he's saying that the government is
5 telling him to lie, i mean, basically.

6 THE COURT: And he was cross examined on that?

7 MR. COBURN: Well, but I didn't have, I mean, I didn't
8 have that piece of paper in which he explicitly says that.

9 THE COURT: And didn't, is my recollection correct that
10 he, he did lie? I mean, he was impeached with prior inconsistent
11 statements before when he was here before.

12 MR. COBURN: He was impeached but my submission to Your
13 Honor, that that sort of impeachment with prior inconsistencies
14 from his grand jury and so on is no substitute for something in
15 his own hand, where he explicitly say, A, I don't know anything,
16 and B, the government's trying to get me to lie about you.

17 THE COURT: Well, I suppose --

18 MR. COBURN: I think it's also a statement against
19 interest, at least in part. It seems to me there are --

20 THE COURT: What part is against his interest?

21 MR. COBURN: I don't have it up here in front of me,
22 Your Honor.

23 THE COURT: Okay. And by the way, the government's
24 position is that he was a member of the enterprise, I mean, he
25 was associated with the enterprise?

1 MR. HARDING: Yeah. Actually, Mr. Hanlon's going to
2 handle this issue.

3 THE COURT: Mr. Hanlon?

4 MR. HANLON: Yes, Your Honor. That is the government's
5 position.

6 THE COURT: Can you refresh my recollection of Bacon's
7 overall place in this?

8 MR. HANLON: I'll attempt, Your Honor. I should be
9 competent to do that because I'm working on closing argument, but
10 we'll see.

11 Mr. Bacon testified that he had drug relationships with
12 Mr. Gardner and Mr. Mitchell during the 1990's and into the
13 2000's.

14 THE COURT: Was he the Catonsville?

15 MR. HANLON: He was one of the Catonsville group.
16 Catonsville comes up in his testimony, but some other
17 neighborhoods as well.

18 He dealt drugs with the various defendants, knew all of
19 them. He testified to taking trips to New York with Mr. Martin
20 and Mr. Gardner. He testified that Mr. Mitchell came along on
21 one of the trips to New York. But Mr. Bacon did not say that Mr.
22 Mitchell engaged in any drug activity on that trip. We heard
23 from Mr. Montgomery about some drug activity on the New York
24 trip.

25 Mr. Bacon also testified about planning and carrying

1 out robberies with Mr. Gardner and Mr. Martin. He described some
2 instances where they would jump out on people to shake them down
3 for money. Maybe somebody would wait in the car while Mr. Bacon
4 did it.

5 THE COURT: Right. Right. There was that one incident
6 in particular where somebody stayed in the car, Mr. Martin stayed
7 in the car?

8 MR. HANLON: Yes, Your Honor.

9 THE COURT: And Bacon and Gardner jumped out on
10 somebody?

11 MR. HANLON: Memory serves, yes, Your Honor. He
12 basically, essentially, provides some body and some background to
13 the case. He does not testify --

14 THE COURT: -- to any to discrete charged incident,
15 does he?

16 MR. HANLON: No. He's locked up for most of the time.

17 THE COURT: Does he testify to any of the racketeering
18 act or any of the substantive counts?

19 MR. HANLON: He provides one piece of testimony that's
20 relevant to the Hammerjacks case, Your Honor. He testifies that
21 in 2002, Mr. Gardner and Mr. Martin went to visit him. He was
22 incarcerated. And Mr. Martin and Mr. Gardner go out to visit him
23 and warn him that Bo's had some trouble and Bo could be in
24 trouble, and they wanted to advise him. That's the closest it
25 ever gets.

1 Later on he has some conversation -- this is in the
2 wake of the Wyche murder. Mr. Martin, Mr. Gardner again a pay
3 him a visit and they mentioned to him that Claudus Lassiter had
4 put their names, Gardner and Martin, Gardner and Martin in the,
5 in the Wyche investigation. That's really the closest that Mr.
6 Bacon ever comes. He was adamant on the stand that he had no
7 real information to provide about whether or not any of these
8 defendants did any of these murders.

9 THE COURT: Right. Okay. Thank you, Mr. Hanlon.

10 MR. COBURN: But, Your Honor, leaving the murders to
11 one side, even if Bacon is not the key witness with respect to
12 any of the five homicides in this case, I mean, he is either a or
13 the key witness with respect to kind of the long history of
14 alleged drug dealing by Mr. Gardner, particularly Mr. Gardner and
15 others, which are, they are predicate acts in the indictment. I
16 mean, they're --

17 THE COURT: And I think he's been fully examined on
18 those issues. Look, I'm going to go ahead and issue the warrant
19 if you want me to issue the warrant.

20 MR. COBURN: I do request it.

21 THE COURT: I don't believe I'm going to postpone the
22 trial if they can't pick him up today.

23 MR. COBURN: Hopefully, they will. Agent Klas, I
24 think, has some information in terms of where he can be located.
25 Hopefully, there can be some communication with the marshals

1 about that.

2 And then the only other thing I think I need to be
3 bothering Your Honor with this morning is, I don't know if Your
4 Honor needs to resolve it at this particular second, but there
5 is --

6 THE COURT: The expert?

7 MR. COBURN: Exactly.

8 THE COURT: Okay. So I thought I signalled pretty
9 clearly last week that I was not going to admit the evidence.
10 But I didn't hear any argument on it. Do you have something new?
11 I know you filed a couple of things in the last several days.

12 MR. COBURN: I did. I thought what Your Honor --

13 THE COURT: Frame the issue for me.

14 MR. COBURN: I will. Just preliminarily, if I could,
15 very quickly. I think what Your Honor was referring to last week
16 was when I made a proffer that I had a witness or two witnesses
17 who were, who were going to say that with respect to
18 bullet-to-bullet comparisons of expended to form projectiles,
19 that can't be done. And Your Honor responded by saying, I'm not
20 going to let that testimony in because I've got an expert here
21 who's actually looked at the evidence, with demonstrable
22 expertise, so on, so forth. So what I tried to do was to scale
23 it back.

24 I tried to meet that issue by saying that all I would
25 elicit, all I would seek to elicit from this particular professor

1 at John Jay College in New York is essentially testimony
2 authenticating the substance of my cross examination of Mr.
3 Ensor. In other words, you know, she would testify about kind of
4 the inherent, intrinsic difficulties with respect to firearms
5 comparison, the fact that it's not quantitative, that there
6 aren't standards. You know, the fact that, you know, there's
7 never been any research in terms of the unique quality of tool
8 marks and the fact that, you know -- what are they called -- I
9 mean, classification characteristics get mixed up with, you know,
10 the more unique characteristics. I'm not using the right
11 terminology.

12 But it's this kind of thing. But she would not express
13 any direct opinion with respect to these particular projectiles.
14 I wouldn't even show them to her. She wouldn't say, this can't
15 be done.

16 So I was hoping that that would, you know, that would
17 address at least some of the Court's concern and seems, to me it
18 seems relatively innocuous. It's been an issue that's been in
19 this case for a long time, at least since I filed the Daubert
20 motion and furnished parts of, or virtually all, I think, of the
21 record in Judge Rakoff's case to all parties and to the Court.

22 And I do have some issues in terms of the, which I
23 think Your Honor is already aware of, the sufficiency of the Rule
24 16 notice and 404, the fact that there was no 404(b) notice with
25 respect to Eric Lee.

1 I think when it's all put together that it would be, I
2 mean, I think it would be appropriate and important for the Court
3 to allow me to present this.

4 THE COURT: This modified proffer that you just made
5 really sounds to me like Daubert evidence on admissibility, not
6 weight evidence before a jury. I mean, I realize there may be a
7 fuzzy line between those two.

8 MR. COBURN: I think sometimes there isn't a line. I
9 mean --

10 THE COURT: What I hear you saying is that she's going
11 to come in and not contradict or refute the government's
12 ballistics expert that she, the government ballistics expert did
13 what she said she did. But you want your witness to come in and
14 say, but that's really hard to do.

15 MR. COBURN: Well, she would refute it, actually. She
16 wouldn't refute it, in other words, she wouldn't be looking at
17 the projectiles.

18 THE COURT: Right.

19 MR. COBURN: And she wouldn't say, you know, a
20 comparison between these expended projectiles versus these, that
21 can't be done. Would not say that.

22 THE COURT: Right. She wants to say that doing this is
23 hard.

24 MR. COBURN: Not just that it's hard. What she would
25 do, Your Honor, I think, is that she would cut down the level of

1 certainty, and that would contradict the government's, both the
2 government's ballistics experts.

3 THE COURT: Cut down the level of certainty by saying
4 it's really hard and you got to be good to do that.

5 MR. COBURN: No. It's more than that, Your Honor.

6 THE COURT: What's the more?

7 MR. COBURN: Can I borrow, can I run over and grab my
8 computer, Your Honor?

9 THE COURT: Of course. Let me hear from Mr. Hanlon
10 while you do that. I think the agent wants to speak to you
11 briefly.

12 MR. HANLON: Your Honor, the government's concern here
13 is that we've gone from, Mr. Coburn talks about this is a scaling
14 down of the opinion. We've gone from, on Friday, we were going
15 to have a discrete opinion about squished fragments in this case
16 to now a critique of the entire science of firearms examination.
17 This is now 48 hours before the close of the defense case, after
18 discovery for four years.

19 The government, if I'd had Rule 16 of this prior to the
20 trial or prior to --

21 THE COURT: That's really your principal point, isn't
22 it?

23 MR. HANLON: It's a principal point, Your Honor, and
24 yes, that is a principal point. If I'd had notice of this prior
25 to the trial or even before my witness took the stand, I would

1 have asked the witness about these points. We're told that one
2 of the points the defense wants to make is that studies have
3 never been done. Actually, some of my witnesses would have
4 testified, if asked, that studies have been done. Well, then,
5 what kind of studies? It raises all kind of issues that I would
6 have anticipated. I was entitled to anticipate them in my
7 analysis.

8 We're now, after four years of discovery, we are
9 literally about to launch into a full-scale Daubertesque hearing
10 about the science of firearms examination. That's not a scaling
11 back. That's an explosion.

12 THE COURT: Daubertesque, is that with a hyphen or
13 without?

14 MR. HANLON: That's no hyphen, Your Honor. It's a
15 Hanlonian term. The government opposes it just on basic notice
16 ground.

17 THE COURT: All right. By the way, Mr. Hanlon, and I
18 guess I can ask Mr. Coburn, who is this professor? Is she a
19 former law enforcement officer?

20 MR. COBURN: No.

21 THE COURT: What is she a former of? I mean, what is
22 she formerly?

23 MR. HANLON: Former associate in a law firm, Your
24 Honor.

25 MR. COBURN: That's probably pretty much right, Your

1 Honor.

2 THE COURT: Former associate in a law firm?

3 MR. COBURN: She's been a professor at John Jay for a
4 long, long time, and has studied this over many, many years. She
5 teaches forensics courses. John Jay is a college in New York,
6 I'm sure Your Honor knows --

7 THE COURT: I have a neighbor who's a professor who
8 actually commutes.

9 MR. COBURN: I mean, she has made just an
10 extraordinarily extensive study of this area over many years.

11 THE COURT: What has she done?

12 MR. COBURN: What has she done?

13 THE COURT: Yeah. Other than read about it and talk to
14 people about it?

15 MR. COBURN: Well, she's read about it. She's talked
16 to people about it. She's written about it. She's taught it. I
17 mean, she's done all those things.

18 THE COURT: She ever fired a gun?

19 MR. COBURN: I don't know the answer to that question,
20 Your Honor. I mean, I suspect she has fired a gun.

21 THE COURT: Why do you suspect that? Because she lives
22 in New York?

23 MR. COBURN: Well, I'm from New York, Your Honor. And
24 of course, I have fired a gun, too. But you know, it's, I mean,
25 she has, you know, the kind of expertise which typically would,

1 she's qualified ten times as an expert.

2 THE COURT: What do you say about the, about the, about
3 the -- she's qualified on what? In what?

4 MR. COBURN: As an expert with respect to firearms and
5 tool mark identification.

6 THE COURT: In what courts?

7 MR. COBURN: That I don't know, Your Honor. I suspect
8 mostly New York.

9 THE COURT: She testified in front of Judge Rakoff?

10 MR. COBURN: I believe she did. I'm not certain about
11 that. I know she wrote an affidavit.

12 THE COURT: All right. And what do you say about the
13 notice?

14 MR. COBURN: Well, and I just want to preface this,
15 Your Honor, by saying, look, you know, I think I've got an
16 excellent relationship with the prosecutors in this case. I
17 know, I know that there's no, there's nothing, no intentionality
18 with respect to this issue on their part. But as I detailed a
19 couple times in the papers here, there is a problem with respect
20 to Rule 16 notice, and I'm talking specifically with respect to
21 Karen Sullivan.

22 All there is, there's no notice under Rule 16 provided
23 by the government ever prior to trial in this case of the
24 substance of the opinion testimony that they seek to elicit from
25 her. All there is, which I attached to something that I filed,

1 is one shred of paper referring to kind of unidentified, you
2 know, something called BF-1. Doesn't even say what BF-1 is.

3 I mean, from my point of view, Your Honor, and we're
4 talking here about uncharged conduct.

5 THE COURT: How was her testimony different from the
6 other ballistics?

7 MR. COBURN: The other guy, first of all, there's a lot
8 more paper with respect to Ensor. And Ensor is talking about a
9 charged offense.

10 THE COURT: Yeah. I understand that. But when you cut
11 to the chase, how is Sullivan's testimony different from the
12 other ballistics?

13 MR. COBURN: Well, if you're talking about the actual
14 substance of what they said in the courtroom, it is different.

15 THE COURT: In what sense? I'm talking now in respect
16 to the Lee shooting.

17 MR. COBURN: It's different in the sense that what
18 she's -- what he's talking about is matching shell, what Ensor
19 testifies about is matching a series of shell casings to a
20 recovered gun.

21 THE COURT: Right.

22 MR. COBURN: That's one thing.

23 THE COURT: In contrast to Sullivan.

24 MR. COBURN: In contrast to Sullivan who's talking
25 about they don't have the gun. She's talking about matching a

1 bunch of squashed expended projectiles from one scene to a bunch
2 of, if I understand correctly, to a bunch of squashed expended
3 projectiles from another scene.

4 THE COURT: Which she said were fired by the same
5 weapon.

6 MR. COBURN: She did.

7 THE COURT: So what's the relevance of they don't have
8 the gun?

9 MR. COBURN: Well, that's one thing, actually, if Your
10 Honor were to allow it, that this expert would testify to.

11 THE COURT: What's the relevance of the fact that the
12 government doesn't have the gun? If she says this projectile and
13 this projectile came from the same weapon, who cares where the
14 weapon is?

15 MR. COBURN: I wish I was a little more literate in the
16 science and could give Your Honor the kind of answer that the
17 Court really deserves to that question. But I can tell Your
18 Honor that this professor would say that with respect to even the
19 level of reliability that's assigned generally to this kind of
20 testimony, it's much, it's much worse. It's much less probable.
21 You know, I mean, the accuracy issue is much, is much more
22 egregious with respect to expended bullet-to-bullet comparisons
23 versus the kind of thing Ensor was testifying to.

24 THE COURT: Okay. Anything else, Mr. Coburn, on that?

25 MR. COBURN: Well, there's also the absence of Rule

1 404(b) evidence concerning the Lee matter.

2 THE COURT: Well, but --

3 MR. COBURN: I don't mean to, and again, I really don't
4 want to point the finger. The only reason I'm pointing it is
5 because they're pointing it at me.

6 THE COURT: I understand you're pointing the finger
7 because they're standing on the rule when I hear you saying,
8 Well, judge, I didn't. And that's not the way it works.

9 MR. COBURN: I'm sorry. I didn't catch the last thing
10 you said, Your Honor.

11 THE COURT: In other words, I'm asking you why you
12 didn't provide notice. And your answer so far has been, well,
13 Judge, they didn't provide notice.

14 MR. COBURN: And that's why I couldn't. And I'll tell
15 Your Honor in all candor, I think it's important for me to say
16 this on the record right now. You know, I looked through all
17 this paper and I did not have anything approaching a clear
18 understanding of this kind of three way triangulated link that
19 the government is trying to prove up in this case connecting the
20 Spence homicide with the Lee homicide with the Wyche homicide
21 indirectly. I just didn't have a good understanding of it
22 because I didn't get that notice.

23 THE COURT: Okay. Well, when did you first learn that
24 that was part of the government's submission?

25 MR. COBURN: I knew at some point pretrial that there

1 was a link that existed out there -- and this is from our own
2 investigation.

3 THE COURT: 2008, 2007, or 2006? When did you learn?

4 MR. COBURN: It was before 2008 that I knew, that I
5 knew that the first link existed between the Spence murder
6 weapon, or rather, the secondary Spence weapon and another
7 homicide of somebody called Eric Lee.

8 But in terms of the other prong of it, the other part
9 linking, you know, Wyche to the Lee homicide, I don't recall
10 having anything like an understanding about that until this trial
11 started.

12 THE COURT: All right. Let me hear from Mr. Hanlon or
13 Mr. Harding as to when that discovery was produced.

14 MR. HANLON: I don't have the exact dates, Your Honor.
15 But in April of 2004, we sent copies of Mark Ensor's reports and
16 Karen Sullivan's reports to the defense. Mark Ensor's reports
17 reflected -- Mark Ensor's may have come later than 2004, Your
18 Honor, come to think of it, but Sullivan's were in 2004. All the
19 discovery was made certainly by the beginning of '06. We
20 produced the CV's in '06.

21 Ensor's reports, which the Court is aware of and which
22 Mr. Coburn is not disputing, I think, reference comparisons made
23 between cases by the respective criminal complaint numbers,
24 Baltimore City, Baltimore County.

25 Karen Sullivan's report is one of the simplest forensic

1 reports I've ever read. It has one line saying, I looked at
2 these items from Baltimore City Case Number something, which was
3 the Lee, I looked at these items from some, Case Number
4 something, which is Wyche, and they matched. I'm paraphrasing,
5 of course. They were bullet fragments and shell casings, as I
6 recollect. That's the connection, Your Honor.

7 I don't think that there's been any secret of the
8 government's intention to join the Spence and the Wyche case
9 through the Lee case throughout the life of this trial. The
10 notion that there's been insufficient discovery is just
11 absolutely insupportable.

12 And I note, Your Honor, that Mr. Coburn's, what he
13 calls the scaled down approach, which is really to attack all
14 firearms examination, would not have been hindered by any lack of
15 discovery. He certainly knew there was going to be firearms
16 examination.

17 So what I call the expanded, what he calls the scaled
18 down approach, the failure to give discovery about that is not
19 even explained even if there had been a defect in the
20 government's notices, which there hasn't been.

21 The defects Mr. Coburn complains of are more relevant
22 to what he was trying to do last week, which was to take what he
23 didn't understand to be a bullet fragment, even though if it was
24 called BF-1 -- and by the way, Your Honor these reports have a, I
25 believe, have a little guide at the bottom.

1 THE COURT: A key?

2 MR. HANLON: Says BF equals this, so forth. I really
3 am taken aback that there's a suggestion there's been any lack of
4 discovery in this case.

5 THE COURT: Okay. Is there any other discovery on the
6 Lee shooting other than the ballistics? Any statements or --

7 MR. HARDING: Judge, you remember Kenny Welsh, the
8 detective, testified. We turned over all of his reports as
9 Jencks material pretrial.

10 THE COURT: He was the lead detective on the Lee
11 shooting?

12 MR. HARDING: Yes. He testified in this trial. So it
13 was obvious that we were going to establish the link.

14 THE COURT: Okay. But you didn't have any witness
15 statements identifying the shooters in the Lee?

16 MR. HARDING: No.

17 THE COURT: Okay.

18 MR. HARDING: That's why we never charged it.

19 THE COURT: Okay.

20 MR. COBURN: I actually don't recall about there being
21 anything about BF-1 equals anything. This is like a cipher. I
22 mean, that's what it was to me, basically. Frankly, Your Honor,
23 it would have been better for me to say, for me to call on the
24 prosecutor at some point and say, you know, what the heck is
25 BF-1, and I wish I had. But by the same token, Rule 16 puts an

1 obligation on them to furnish me, you know, with a fairly
2 detailed, you know, substance of the testimony and so on. And
3 they're conceding that didn't happen.

4 THE COURT: Well, you know, Mr. Coburn, and I don't say
5 this unkindly, but I have to say it because it's one of the
6 elephants in the room, is the history here is that you and Mr.
7 Kurland were scheduled for trial in, what? September, '05? Or
8 September, '06?

9 MR. MARTIN: March or April. Spring.

10 THE COURT: It was the fall semester.

11 MR. MARTIN: Originally, it was the spring.

12 MS. RHODES: March, '06 it was about to go.

13 THE COURT: Was it the spring semester, Mr. Kurland, or
14 the fall semester?

15 MR. KURLAND: Judge, it was about two years earlier.
16 But I will say --

17 THE COURT: But I mean, I seem to recall you always
18 slotted for the fall semester. Is my recollection --

19 MR. KURLAND: Judge, it's been so long and so
20 convoluted I can't say with certainty. I just wanted to be
21 within one full semester, which the Court graciously has
22 accommodated that. But even if it were two years ago -- I just
23 want to say one thing -- it's my recollection, and I could be
24 wrong because I hadn't focused in on this -- but had we gone to
25 trial separately I don't believe the government was prepared to

1 put on any of the Lee testimony at all in a separate trial.

2 THE COURT: Be that as it may, my point is simply that
3 when Mr. Coburn says to the Court, I don't recall, part of the
4 burden there is the history of the missing discovery or the
5 failure to find certain discovery that was indisputably produced
6 by the government to Mr. Gardner's counsel. And again, I'm not
7 being critical at all. I'm certainly not intending to be.

8 But it seems pretty clear in the history of this case,
9 and I forget specifically what's on the record and what's not on
10 the record, the government produced discovery to Mr. Gardner well
11 in advance of its production to anybody else because Mr. Gardner
12 was severed and was scheduled for trial some two years ago,
13 either the spring semester or the fall semester. And so that's
14 part of what the Court is looking at here.

15 MR. COBURN: Well, I can understand that, Your Honor.
16 And I'm not disputing the fact that I had a Jencks production. I
17 mean, as Your Honor knows and as I've stated a number of times
18 throughout these proceedings, I mean, you know, we tried, we made
19 extraordinary efforts to gather all that material, which had all
20 been sort of culled out into witness folders, back again and
21 provide them to our codefendants' counsel.

22 As far as I know, we did, you know. I mean, but here
23 the issue is not so much that disclosure because here, you know,
24 what we're talking about is one sort of cryptic shred of paper
25 which does not comply. It just unambiguously does not comply

1 with Rule 16 in terms of Sullivan's expert opinion and there
2 being no 404(b) notice.

3 I mean, you know, it seems -- and moreover, Your Honor,
4 there have been other mid-trial expert disclosures in this case.
5 You know, nobody has, you know, sort of suggested any particular
6 undue prejudice as a result.

7 THE COURT: All right. The Court's not going to permit
8 the testimony. The Court finds that the rule has not been
9 complied with through no particular fault of Mr. Coburn.
10 Frankly, the whole Rakoff/Daubert ruling came about. I credited
11 Mr. Coburn with even discovering it. I've considered it.

12 This frankly seems to be really very much a part of
13 that; namely, really a Daubert issue. And I appreciate, Mr.
14 Coburn, that you've tried to, as you put it, narrow or limit what
15 you want to do by way of expert testimony on the ballistics. But
16 the Court is not satisfied that you have complied with Rule 16.

17 And furthermore, the Court, on the basis of the
18 proffer, fails to see the relevance of the evidence. And I don't
19 mean to be flip, but it really does sound like what you want
20 Professor Schwartz to come in and say is what I said; namely,
21 that this is hard stuff, that you got to be really good to do it
22 right, and I've read a lot of material about it and I've written
23 about it. I don't think it's going to be terribly helpful to the
24 jury at all.

25 The Court's general expert instruction, of course,

1 reminds the jury that they are not to accept an expert's opinion
2 just because it's an expert opinion, that they have to make their
3 own independent evaluation of credibility and the weight of all
4 the testimony. And you are free to argue from a common sense
5 perspective and from the cross examination of the ballistics
6 experts that the jury should not highly credit the testimony
7 derived from the Lee homicide.

8 So that's the Court's ruling. Your exception to the
9 ruling is preserved.

10 MR. COBURN: Well, I appreciate Your Honor's comments
11 and also Your Honor hearing me out on it.

12 MR. KURLAND: Your Honor, could I just put one other
13 thing on the record?

14 THE COURT: Yes.

15 MR. KURLAND: I am fairly certain, even though my mind
16 might have failed me on at least minor details, but with respect
17 to our preparation for the severed trial, I am fairly confident
18 that with respect to the Lee matter, the government provided no
19 404(b) notice with respect to that. It wasn't until, I think,
20 almost at the dawn of this trial the government filed anything.

21 THE COURT: And I have ruled. And I reiterate my
22 ruling. It's not 404(b) evidence. It's not.

23 MR. KURLAND: All right, Judge. Thank you.

24 THE COURT: Okay. All right. Ms. Rhodes. Good
25 morning.

1 MS. RHODES: Good morning, Your Honor. On the Damita
2 Green issue, which is the tape that we'd asked to play for the
3 jury and to present the transcript of, Mr. Harding informed me
4 this morning that they are, they're willing to stipulate to that
5 transcript.

6 THE COURT: I'm sorry. Which transcript?

7 MS. RHODES: Damita Green is the --

8 THE COURT: No, I know who she is. But I was a little
9 confused because it wasn't clear to me whether you were talking,
10 not just now, but even in your written materials, are you talking
11 about the police interview or are you talking about the grand
12 jury testimony?

13 MS. RHODES: Grand jury. They already --

14 THE COURT: Are you talking about both? What's the
15 government agreed should come in?

16 MS. RHODES: Okay. The grand jury, I already agreed.
17 They wanted it in and I agreed to that. So that's already in.

18 THE COURT: Is that the one we redacted or you
19 redacted? There were certain redactions to that.

20 MS. RHODES: Yes. That's the one we did a couple of
21 redactions on. Yes.

22 THE COURT: Because you withdrew Mr. Lawlor's
23 objection.

24 MS. RHODES: That is correct.

25 THE COURT: Okay. All right.

1 MS. RHODES: Thank you for refreshing my recollection
2 on that.

3 THE COURT: No. You know, certain, certain benchmarks
4 help me remember what was going on.

5 MS. RHODES: Unusual moments come to mind.

6 THE COURT: Yes. And all of Mr. Lawlor's moments are
7 unusual. I had to do that, Mr. Lawlor.

8 MR. LAWLOR: I'm just sitting here minding my own
9 business.

10 THE COURT: So now you've agreed to the police
11 interview transcript?

12 MS. RHODES: Well, I wanted this in. I want --

13 THE COURT: I'm sorry. You want -- what's this?

14 MS. RHODES: I wanted the police interview transcript
15 in and play the tape. And the government has agreed to stipulate
16 to the transcript. And I intend to play the tape today or when
17 we get to it. But they want a couple of sentences excised. And
18 so that's what I wanted to briefly discuss this morning.

19 THE COURT: Because you don't?

20 MS. RHODES: I prefer to have them in.

21 THE COURT: All right. Do you have a copy of the
22 transcript that I can look at when you --

23 MS. RHODES: Yes, Your Honor.

24 THE COURT: Thank you.

25 MS. RHODES: You will also notice, Your Honor, this is

1 marked at the top as a defense exhibit because we have, this is a
2 slightly modified transcript. In other words, we've inserted
3 some things that we think are missing from the tape recording.
4 That's kind of a separate issue. I don't think the government
5 has a problem with that. But that's --

6 THE COURT: Let's make sure. Whose witness was Ms.
7 Green? Mr. Hanlon. All right, Mr. Hanlon, I am holding in my
8 hand what is labeled at the top "revised transcript Mitchell
9 Exhibit Number Five." So the question is, is that the transcript
10 that you have agreed with Ms. Rhodes should be admitted?

11 MR. HANLON: Your Honor, I hate do this. But Mr.
12 Harding's has been handling this little issue. So can we -- I'm
13 sorry.

14 THE COURT: I don't. I don't care whether it's you or
15 Mr. Harding. I just want the one who's handling it.

16 So my question, Mr. Harding, is just, is this the thing
17 that you've agreed should be admitted subject to Ms. Rhodes' and
18 your disagreement over one or two sentences?

19 MR. HARDING: Yes.

20 THE COURT: Okay. All right. I'm clear. All right.
21 Ms. Rhodes, what do you want in and what is the government
22 objecting to? By the way, Ms. Rhodes, the copy that I have has
23 interlineations.

24 MS. RHODES: Yes.

25 THE COURT: Is that the way it's going to go to the

1 jury?

2 MS. RHODES: Yes, Your Honor.

3 THE COURT: I guess there's no way to clean it up?

4 MS. RHODES: I don't want it cleaned up.

5 THE COURT: So how will it be explained to the jury?

6 MS. RHODES: Well, that's part of --

7 THE COURT: In other words --

8 MS. RHODES: We're calling, we're calling Detective
9 Niedermeier, who is the one who --

10 THE COURT: Prepared the transcript?

11 MS. RHODES: Well, no, he didn't prepare the
12 transcript. He interviewed her. And this is, really, sort of
13 goes to something else, about how these transcripts are prepared
14 and how transcripts in general are prepared and how accurate they
15 are or are not.

16 THE COURT: Okay. Let me, I don't want to drag this
17 out. But let me make sure I'm following. Let's just take line
18 three. Whoever prepared this transcript apparently misspelled or
19 misapprehended when she said Mollye Road, M-O-L-L-Y-E. Whoever
20 prepared the transcript transcribed that oral statement as Marley
21 Road, M-A-R-L-E-Y. Because you've crossed out Marley and you or
22 someone has written in Mollye, M-O-L-L-Y-E.

23 MS. RHODES: Correct.

24 THE COURT: And instead of Apartment 1-B, somebody has
25 crossed through the 1 so that it now says Apartment B. What is

1 the point of giving the jury, just, this is just an example, of
2 giving a transcript that's been corrected by interlineation by
3 agreement? What is the point of that? What is that?

4 MS. RHODES: Well, Your Honor, as the Court recalls
5 last time, last day we were in court, Thursday, Mr. Martin put in
6 a transcript of the voice mail that was something that they had
7 come up with, their version of it. Okay?

8 THE COURT: Right.

9 MS. RHODES: In a sense, I'm doing two things at once
10 here. And I am showing that this transcript, simply that there
11 are a lot of corrections. In lieu of just putting in exactly
12 what the government had, I wanted to put in the corrections.
13 Some are, some are minor. Some are, I mean, nothing is hugely
14 substantive. But it's part of a bigger picture that I'm trying
15 to show the jury having to do with transcripts and the way people
16 hear things differently. In other words --

17 THE COURT: Go ahead.

18 MS. RHODES: A number of things. Like on, for example,
19 on page, Page Three -- actually, let me find. Let's go to Page
20 4, about two-thirds of the way down, where Green says, the
21 interlineation initially is "yeah." The word "yeah" was left
22 off. It goes through, Darryl said he had to go out Essex, and he
23 said he had to go over, he said he had to go over east Baltimore.
24 Then he had to go back over West Baltimore. And they have an
25 "it's" twice below. It's just to show the jury that it's easy

1 to, even for somebody who works for the police department, knows
2 what they're doing, to make mistakes like this as they're
3 transcribing. It's an illustration for the issue having to do
4 with the voice mail transcript. And there are a number of these.

5 THE COURT: Okay. I mean, if the government doesn't
6 care, I suppose I shouldn't care too much.

7 MR. HARDING: Your Honor, we do, we do care about the
8 interlineations issue. This is the first I've heard of it. This
9 is the first I've heard that one of the purposes was to attack
10 transcript preparation.

11 THE COURT: Okay.

12 MR. HARDING: And she flashed her interlineated version
13 in front of my eyes this morning but I really never even focused
14 on the fact that she was making insertions into the transcript.

15 MS. RHODES: You specifically asked me if that's what I
16 was doing and I said yes.

17 THE COURT: Okay. There was, there was a
18 misunderstanding.

19 MS. RHODES: Okay.

20 THE COURT: Okay? So Ms. Rhodes, I don't think I'm
21 going to let you do it. But I'm going to hear you fully. It's
22 one thing Mr. Martin, Mr. Flannery, quite appropriately, created
23 their own transcript. And any defendant is entitled to offer an
24 alternative transcript, as are you. And I appreciate if there's
25 not a word processing version of this somewhere that you can

1 quickly fix. But I really hesitate to burden the jury with this
2 kind of edited document. I mean, I appreciate you trying to show
3 that, consistent with the Court's instruction, that the
4 transcript is not the evidence, that it's the actual tape. And
5 we've all the seen in other trials, and certainly in this one,
6 you're sitting there, you're reading through the transcript, even
7 on the voice mail, you could hear things that weren't showing up
8 in the transcript.

9 So it is, it is perfectly obvious that nearly any
10 transcript is going to vary somewhat from what you actually hear
11 on the tape.

12 So is there a word processing version of this somewhere
13 nearby, Mr. Harding?

14 MR. HARDING: Well, one, you can simply take this typed
15 page and scan it, Your Honor. That's what, that's what my,
16 that's what I did with one of the other transcripts. You scan it
17 and then you make the changes yourself. So this uninterlineated
18 version could be scanned in a matter of minutes and then we'd
19 have a Word Perfect version of it.

20 THE COURT: You must have a good scanner because mine
21 doesn't work quite that well. It's a pretty labor intensive,
22 when we tried to do it, it's very labor intensive to change a
23 scanned document.

24 MS. RHODES: Mine as well. If I could just continue
25 on.

1 THE COURT: I suppose if you have the professional
2 version of Acrobat it's easier. But anyway, go ahead, Ms.
3 Rhodes.

4 MS. RHODES: Thank you, Your Honor. The point, I mean,
5 it was not for lack of time or word processing that I did it this
6 way. It is to show the jury how easy it is to misunderstand.

7 THE COURT: But this is not the way to do that. The
8 way to do that, in my opinion, is to create your own transcript,
9 not an interlineated, edited version of the government's
10 transcript, but create your own transcript and play the tape and
11 let the jury read your version of the transcript.

12 Now, I'm not even sure I would permit you, I suppose I
13 would, but if you were to say to me, Judge, I want the jury to
14 hold up, like, say, during closing argument, I want the jury to
15 hold up the two copies of the transcript and I want the jury to
16 compare our version with the government's version, I'm not sure
17 I'd permit you to do that because the transcript is not in
18 evidence. It's not in evidence. It's simply an aid to the
19 jury's listening to the tape.

20 MS. RHODES: But in this case it will be in evidence.

21 THE COURT: What?

22 MS. RHODES: In this case it will be in evidence
23 because it's coming in --

24 THE COURT: That's particularly why you should create
25 your own version or the government and the defense together agree

1 on a version. But right now, we don't have an agreed version of
2 the transcript.

3 MS. RHODES: Okay.

4 THE COURT: The government's version of, the
5 government's version of the transcript is not in evidence.

6 MS. RHODES: No, it's not now. That's why I'm asking
7 to get in with corrections. Your Honor, can I just explain the
8 whole picture?

9 THE COURT: Go ahead. Sure.

10 MS. RHODES: Okay. And perhaps it's just confusing me
11 because we're doing two things at once.

12 THE COURT: Right. Right.

13 MS. RHODES: First, if we just look at the government's
14 transcript, okay? That's over here. They want to, maybe we
15 should get to that issue first, actually. They want to excise a
16 couple of sentences. Okay? And their concern is that these are
17 sentences on Page Two, starting at the end of the first long
18 paragraph of Ms. Green, where it says, um, present with him was
19 Anthony Wyche and Shabazz, otherwise known as Deeze. All three
20 of them left together and they got in the same car and they never
21 came back. They dropped Deeze off, though. I know they dropped
22 him off.

23 Starting around the middle of that sentence, I think
24 that all three of them left together and they got in the same
25 car, is what the government objects to, through Niedermeier's

1 question, How do you know they dropped Deezo off? To Green's
2 next answer, Because he wasn't with them. I know that they had
3 to drop him off because otherwise he would have drove. He
4 wouldn't have got Anthony to drive him.

5 The government's position, according to Mr. Harding
6 this morning, is that that's speculative.

7 THE COURT: Clearly it is.

8 MS. RHODES: And that therefore it shouldn't come in.

9 THE COURT: Right.

10 MS. RHODES: But if we turn the page to Page 4, just
11 before that, the bottom of Three, Niedermeier says, Detective
12 Patton, do you have any questions? And Detective Patton says,
13 you said they dropped off another person? And she says, uh-huh.
14 Patton: But you don't know that for certain, though? Did you
15 talk to that person, Deezo, you said? No, I didn't talk to him
16 personally and ask him.

17 The issue is effectively cross examined. I mean, it's
18 clear that she didn't know for a fact.

19 And the reason that this is significant, and the Court
20 recalls, of course, she had no recollection whatsoever of
21 anything she had told or almost anything she had told the grand
22 jury or the detectives, is that Deezo contradicted this, what she
23 says about whether Anthony would have driven or not. And so I
24 think this is important for us to get in, that she said something
25 that was the opposite of what Deezo said.

1 THE COURT: Okay. I'm afraid I agree with the
2 government. The fact that Patton comes along several minutes
3 later and asked her a question that permits her to back off some
4 speculative assertion that she made a few pages earlier doesn't
5 cure the problem. That's why this transcript isn't --

6 MS. RHODES: Well, in the grand jury, she then says,
7 she then says something to the effect of, I don't know.

8 THE COURT: You see, that -- I'm sorry. Go ahead.

9 MS. RHODES: And so I think that what we're, I can't
10 cross examine her because she remembers nothing. So I think I'm
11 entitled to have in what, what I would have crossed her with.
12 This would have been the impeachment, then. And so this is
13 impeachment within something that's coming in as past
14 recollection recorded.

15 THE COURT: But you did impeach her.

16 MS. RHODES: No. The Court specifically said that what
17 I was doing was not impeachment because she had no recollection.

18 THE COURT: But you impeached her by simply attempting
19 to refresh her recollection. That's impeachment as well. In
20 other words, during your cross examination you asked her about
21 who got in the car and so forth and so on. And she said, I don't
22 remember.

23 Now -- you did. And so --

24 MS. RHODES: Your Honor, I don't remember if I asked
25 this particular question. But the ruling, but the ruling was it

1 was not impeachment. You ruled it's not impeachment if she has
2 no recollection. And that's how we got into this question.

3 THE COURT: But you still questioned her about it.

4 MS. RHODES: Not everything, not everything in here.

5 THE COURT: Well, Ms. Rhodes, I didn't tell you what
6 questions to ask. My recollection is that you wanted the grand
7 jury transcript admitted under the rule as substantive evidence.
8 Mr. Lawlor had previously made an objection, before you began
9 your cross examination of Ms. Green, which the Court sustained.

10 And then when you did your cross examination, when the
11 witness' recollection failed and you couldn't refresh her
12 recollection, you wanted to introduce the transcript as
13 substantive evidence under the rule. And my response was, Do you
14 want to withdraw your objection? And you said, Yes, I'll
15 withdraw Mr. Lawlor's objection.

16 Thereafter, you and the government reached agreement to
17 admit the grand jury testimony as substantive evidence with
18 certain redactions. So that's where it was.

19 Now -- correct me if I'm wrong -- now we're going
20 backwards further past the grand jury transcript stage. Now
21 we're looking at the interview of the investigating detectives,
22 which was recorded and now transcribed.

23 And if I'm following you, there were certain things
24 that either she didn't say or her recollection simply failed when
25 she testified in the grand jury. So now you want to go back and

1 you want to put in the statement to the detectives as substantive
2 evidence. Right?

3 MS. RHODES: Correct.

4 THE COURT: And the government's position is, okay,
5 we'll agree to that, but we're not going to agree to the
6 manifestly speculative statements that she made to the
7 detectives, which, as you just pointed out, in fact, even within
8 the same interview, she contradicted herself.

9 So I'm not going to admit that portion of it. But for
10 purposes of your cross examination, I understand what you are
11 saying. I think I do. She wasn't impeached through the use of
12 the grand jury testimony in terms. But those statements that she
13 allegedly made both before the grand jury, and I believe the
14 record will speak for itself, I believe you actually used the
15 transcript of her interview with the detectives to question her.

16 Do you remember saying to the detectives so forth and
17 so on? She said, no, I don't. Well, the jury heard that. So
18 yes, if the jury correctly follows my instructions on prior
19 inconsistent statements, the jury won't infer that she was lying
20 in the courtroom because she couldn't remember something that she
21 allegedly said to the detectives. But the jury having heard your
22 good faith basis for questioning her about that statement, and
23 the jury saw that you had a transcript of the statement, and if
24 I'm not mistaken a portion of her, am I correct that a portion of
25 the recorded statement was played to the jury?

1 MS. RHODES: No.

2 THE COURT: No? Okay. So that's my point. Sorry to
3 be so long winded. But it's all in front of the jury.

4 MS. RHODES: Okay. So issue two then.

5 THE COURT: Well, is there a second statement that the
6 government is objecting to? Or is that the only one? I mean,
7 those are two separate statements, I think. Because the
8 government is saying, the government doesn't want in the middle
9 of Page Two or the sort of, quote-unquote, "correction" to that.

10 MS. RHODES: I don't know what their position is on the
11 correction.

12 THE COURT: Well, would you want the correction in if
13 the Court keeps out the original speculation?

14 MS. RHODES: Yes, I would still want the correction in.

15 THE COURT: Mr. Harding, do you care about pages,
16 bottom of Page 3, top of Page 4? I guess it's really top of Page
17 4.

18 MR. HARDING: Well, I guess I have to say I want that
19 out because it would be very confusing.

20 THE COURT: I agree. I agree. So we would delete the
21 first four lines of four and all that portion of Page Three after
22 she says, All three of them left together, down to Niedermeier's
23 question, Approximately what time did they leave?

24 MS. RHODES: Page Two you mean, I think.

25 THE COURT: On Page Two, yes. Okay.

1 MS. RHODES: All right. So the second issue, Your
2 Honor, is just that I thought that it would be, first of all,
3 cumbersome for the jury to have two transcripts, the government
4 one and then one with minor changes, and simpler for them to see
5 what the changes are if it were done by interlineation. And I
6 think I'm entitled to show what the differences are.

7 I mean, in the case of what Mr. Martin has done with
8 the voice mail transcript, the jury will have to look at both to
9 see what the differences are. I mean, that's just, they should
10 be doing that. That doesn't mean one is right and one is wrong.

11 THE COURT: Of course. And I think the difference
12 here, one difference clearly is that Mr. Martin's, Mr. Martin
13 made substantive changes to the transcript. I mean, substantive
14 changes. What you've done here, and I salute you, obviously, I
15 don't know if you're right or if the transcript is right, but I
16 take you at your word that there was quite a bit of stuff, and I
17 have to say, by the way, I don't think I've ever had a trial
18 where I agreed 100% with the transcript, at least not since my
19 hearing started to fade a few years ago. Or before then.

20 I'm trying to think of a way you can achieve what you
21 want to achieve, Ms. Rhodes. I will tell you in all honesty one
22 of the things that bothers me the most is the editing marks in
23 the margin. We all do that and it's very helpful. But I'm not
24 going to give this to the jury with those check marks in the
25 margin. It's just clutter. It's noise. And the jury's got a

1 hard enough job in this case.

2 Now, if you wanted to go through, I think, if you
3 wanted to go through in like a red pen -- Mr. Harding is shaking
4 his head -- but if you wanted to go through with like a red felt
5 tip, and whichever one of you over there has the best
6 handprinting, if you wanted to try to make some, I don't know,
7 half dozen or so of the major changes, I might permit you to do
8 that. But, you know, I'm not going to --

9 MS. RHODES: Well, I need to excise the part coming
10 out --

11 THE COURT: Just to show you what I'm getting at. Page
12 Seven, you added a T to the word "mean" so that it reads "meant"
13 and you struck the word "that" and you inserted U-H for uh. So I
14 don't seed the benefit of putting in grunts.

15 MS. RHODES: Your Honor, this case rises and falls on
16 the voice mail and I am making a comparison to the voice mail
17 transcript here. It's demonstrative of the kind of thing that
18 people do when they listen to tapes. And that's what it's about.
19 So uh and mean for meant, and leaving out the "and you",
20 something at the end there that was completely left off, this is
21 exactly what we're talking about in this case.

22 THE COURT: All right. Well, I'm sorry I just disagree
23 with you that this tape is all about the voice mail. Frankly,
24 the significance of the voice mail has faded, in my judgment,
25 every day in this trial. When we started, it was like the

1 centerpiece of the government's case. And I can remember a
2 couple of years ago there were going to be all these witnesses
3 who were going to come in and identify the defendants' voices,
4 and the government didn't want to disclose the identity of the
5 witness, so I had to postpone the suppression hearings on the
6 voice identifications until the trial. And that's part of the
7 reason now why we're sitting here on November 17th in what the
8 government said was going to take 12 trial days to put on its
9 case, here we are November 17th, a week and a half before
10 Thanksgiving, and we're desperately trying to get to the end of
11 it.

12 So the voice mail, frankly, is there and the jury will,
13 I suspect, listen to it several times during deliberations. Who
14 knows whose voice is on that tape? Certainly, the name "Wayne"
15 is spoken and "Shorty" is spoken. And a couple of people,
16 particularly Mr. Hayes, seems to be well positioned to identify a
17 couple of voices on that tape. But this case is not all about
18 the tape.

19 MS. RHODES: Your Honor, I think that's something, a
20 decision that we on behalf of our client are entitled to make,
21 what is important. And what's important for us to put in as part
22 of our defense.

23 THE COURT: Of course. Of course.

24 MS. RHODES: And this is a way of doing that.

25 THE COURT: Okay. Well, let me hear from Mr. Harding.

1 MR. HARDING: Crucially, Your Honor, this transcript is
2 not the government's transcript.

3 THE COURT: You mean the one that's marked up or --

4 MR. HARDING: The unmarked-up one is not the
5 government's transcript. It was prepared by a secretary in the
6 police department. It was not introduced into evidence. We did
7 not play this tape for the jury. It's not part of this case. We
8 produced it to the defense in the generosity of our discovery.
9 But it's actually not even discoverable. Only the tape is
10 discoverable.

11 THE COURT: I think that's right. I think that's
12 absolutely right. If you weren't -- I mean, I think that's
13 absolutely right.

14 MR. HARDING: Ms. Rhodes is now trying to create a
15 battle of transcripts. She's trying to pit her transcript
16 against a transcript that is something produced over in the
17 police department years ago by a woman who's not a witness in
18 this case, and she's trying to make points. But they're
19 completely irrelevant and she might just as well have gotten
20 somebody off the street to prepare a sort of straw man transcript
21 for her to attack. This is not something the government has ever
22 sponsored.

23 THE COURT: Thanks for reminding me of that, Mr.
24 Harding. I mean, Mr. Harding, is your recollection the same as
25 mine? That Ms. Rhodes did, in fact, use the transcript in her

1 cross examination of Ms. Green? Or if you don't remember, that's
2 fine.

3 MR. HARDING: I can't say that I specifically remember
4 that, Your Honor. But I have one other point to make in
5 connection with the previous issue, which goes to why we're so
6 clear that this was speculation on the part of Damita Green.

7 In the grand jury on Page 11, she was asked, did you
8 see them leave together in the same car or did you just not see
9 them after they walked out the door? Answer: I didn't see them
10 after they walked out the door.

11 She didn't realize that Deeze had driven to Brandy's
12 apartment house to meet Darius, Darryl Wyche that night before
13 they went off to Washington. She thought, she just assumed that
14 the Wyches were going to drop him off, not realizing that his car
15 was right there. And that's the basis for her false assumption.

16 THE COURT: All right. Thank you, Mr. Harding. Ms.
17 Rhodes, I have to say, I now have --

18 MS. RHODES: Can I just add one thing, Your Honor, to
19 this?

20 THE COURT: I'm going to permit you. But just let me
21 say, because Mr. Harding really has brought me back to ground.
22 In fact, the government didn't use the transcript. The jury's
23 never seen this transcript. The government's not vouching for
24 this transcript. So far as I can tell, the government never
25 intended to use transcript at trial. And I think Mr. Harding is

1 absolutely right, the defense was not entitled to receive this
2 transcript. Absolutely. The statement is the recorded
3 statement.

4 And so it's perfectly clear now that you're not
5 entitled to put in this transcript. Now, the government's agreed
6 to the admission of the tape. And so I assume, Mr. Harding, the
7 government is not averse to having the jury review the transcript
8 while it listens to the tape, I mean the unedited but redacted --

9 MR. HARDING: That's correct.

10 THE COURT: -- transcript? Okay. All right. I now
11 understand the issue, Ms. Rhodes, in a way that I didn't before
12 and I'm sorry wasted your time, if that's what I did.

13 MS. RHODES: I just have to comment, Your Honor, that I
14 think it is disingenuous at best for the government to say that
15 this, some person over at the police department, we don't know
16 who, we're not vouching for her, did this, when, in fact, they
17 have already put in the transcript of Shelly Wayne Martin's
18 statement, transcribed by the very same Dolly Dobrsycki, and the
19 statement of my client transcribed by the same Dolly Dobrsycki.
20 So it seems that they do condone and support and vouch for her
21 abilities.

22 MR. HARDING: For the record, Your Honor, we actually
23 modified those transcripts using the technique I described
24 earlier of having, having them scanned and then retyped.

25 THE COURT: Okay. Thank you, Mr. Harding. All right.

1 So here's where we are, Ms. Rhodes. The government agrees with
2 the redaction that the Court has ordered, Page Two and the top of
3 Page Four, to the admission of the taped interview of Ms. Green.
4 And I presume, by the way, since that's going to happen today, is
5 Niedermeier here today?

6 MS. RHODES: We had called him for tomorrow, Your
7 Honor.

8 THE COURT: Okay. So it will be tomorrow. So I assume
9 you'll have no objection to the government actually playing the
10 tape, actually working the tape, the computer? Or not?

11 MS. RHODES: I have the cassette to do it.

12 THE COURT: Okay. And you'll take care to delete those
13 portions that --

14 MS. RHODES: Yes. Yes. And I will, with the Court's
15 permission, perhaps make my own transcript. I have to think
16 about that, whether we want to use mine instead of Ms.
17 Dobrsycki's.

18 THE COURT: Okay. All right. Any word from the jury
19 yet, Belinda?

20 THE CLERK: She's here.

21 MR. KURLAND: Two brief things. One, after
22 consultation with Mr. Coburn, we would ask that the Court issue a
23 warrant for that witness. You know, obviously, we would talk to
24 her. No guarantee we would put her on. But we certainly want
25 her to respond to the subpoena and have a chance to talk her, to

1 determine whether or not -- I don't want to mislead the Court and
2 say go out and have her arrested, and us not putting her on.
3 That's a possibility, if after talking to her we decide the whole
4 process has gotten her to the point that we don't think she'll be
5 a productive witness. But we think it's necessary to get her
6 here.

7 THE COURT: All right. Do you have a phone number for
8 her mother?

9 MR. COBURN: Yes, Your Honor.

10 THE COURT: Give it to Ms. Arrington, please.

11 MR. KURLAND: Your Honor, the other -- I'll just be
12 very brief on this.

13 THE COURT: I'm sorry. Can you give the phone number
14 to Ms. Arrington?

15 MR. COBURN: Will do right now, Your Honor.

16 THE COURT: And Ms. Arrington will call. What's her
17 mother's name? I mean, is her mother at work or something?
18 What's going on there? You just don't know?

19 MR. COBURN: I just don't know.

20 THE COURT: All right. Ms. Arrington will call and
21 I'll see if we can't avoid having to arrest. She's 17 years old?

22 MR. COBURN: I believe that's right. I appreciate that
23 very much, Your Honor.

24 THE COURT: Yes.

25 MR. KURLAND: One other matter, again. This comes up

1 with respect to how these grand jury transcripts that were just
2 discussed are being handled differently. I just wanted for
3 clarification to, because this is obviously going to be important
4 with respect to closing arguments. Several witnesses earlier
5 testified in this trial and their grand jury transcripts were
6 referenced and they either affirmed or denied making those
7 statements.

8 It's my understanding, consistent with a proposed
9 instruction that I submitted, which is a standard instruction
10 concerning the use of inconsistent statement for impeachment
11 purposes and also as substantive evidence if it qualifies as
12 grand jury testimony, there's about four or five witnesses, I
13 don't intend, unless the Court says it's absolutely necessary, to
14 actually get the physical copies of the grand jury transcripts
15 that were referred to in actual examination and admit them as
16 extra exhibits. But I do certainly intend to argue that based on
17 prior inconsistent statements that were shown to the witness and
18 they ratified, that that is evidence in the record, without the
19 physical piece of paper of the grand jury transcript shown on
20 DOAR, but not actually moved into evidence. That I can argue
21 that that is substantive evidence in the case which reflects in
22 the transcripts that I've gotten. The standard instruction --

23 THE COURT: Mr. Kurland, we went over this.

24 MR. KURLAND: Well --

25 THE COURT: Just a moment. We clearly went over this.

1 In the draft of my instructions that I'm working on and expect to
2 get to you folks, hopefully before 6:00 tonight, it is my
3 intention to actually list specifically those grand jury
4 transcripts that are in evidence, available for the jury's
5 consideration.

6 Mr. Crowe, for example, if my memory serves correctly,
7 in his request for instructions, identified, I believe it was Mr.
8 Crowe, a specific witness whose testimony, or maybe not -- my
9 point is we discussed this. And it is not sufficient for counsel
10 to have used the grand jury transcript to impeach a witness
11 without highlighting for the Court that you intend that testimony
12 to be admitted as substantive evidence.

13 So you really are going to need to give me a list, give
14 me and the government and other counsel a list of those witnesses
15 that you contend on the basis of grand jury testimony, those
16 witnesses whose trial testimony should be supplemented as a
17 substantive matter with their grand jury testimony.

18 Do you remember? We went over this, really. We spent
19 quite a few minutes talking about this. The Court has to be
20 apprised at the time of the examination that it's intended that
21 grand jury testimony be admitted as substantive evidence. And if
22 that wasn't done, I hesitate to say now that the jury has
23 available to it that testimony as substantive evidence.

24 Now, I'm not prepared to say that there weren't a
25 couple of instances that you may not be able to reconstruct and

1 there won't be any prejudice to anybody and I may be willing to
2 go ahead and do that. But when that's come up, and it's come up
3 two, maybe three times. Ms. Green and --

4 MR. COBURN: Reynolds, Your Honor.

5 THE COURT: Mr. Reynolds. And I think maybe one other
6 witness. We talked about it. We agreed that the grand jury
7 transcript was in. Appropriate redactions were made, etc. But
8 you can't come in in closing argument and say, oh, by the way,
9 this contradicts the witness' trial testimony and now it's before
10 the jury as substantive evidence, when the government or some
11 other defendant didn't have the opportunity under the rule of
12 completeness or under any other rule to put in more of the grand
13 jury testimony.

14 MR. KURLAND: Judge, my recollection of our discussion
15 is about 90% consistent with that, but in one significant way,
16 and I just want to put this on the record, a little bit
17 different.

18 The general rule is that when evidence is admitted
19 absent a limiting instruction at the time, even if it's otherwise
20 inadmissible hearsay, it's admissible for all purposes subject
21 to, you know, any, a limiting instruction the judge gives.
22 Otherwise, the jury can consider it for all purposes.

23 In the three or four instances that I am --

24 THE COURT: By the way, I don't agree with you that
25 that's the general rule. Go ahead. Go ahead.

1 MR. KURLAND: All right. As in evidence -- we can deal
2 with that later after the trial is done. Just between you and
3 me. But separate from that, Judge, in the instances that I am
4 referring to, and many of these were not witnesses that I, that I
5 examined, if the grand jury transcript is put on the DOAR and the
6 statement and, this is a grand jury statement that you made, did
7 you not make the statement, I wouldn't want to do anything other
8 than what is already in the transcript record. I'm not going to
9 refer to grand jury portions that were not even shown.

10 But it would be my position, Your Honor, that if there
11 was a colloquy before a witness and they were specifically
12 pointed to, did you say this before the grand jury, and they said
13 yes, I did, and that's inconsistent with their trial testimony,
14 then that is sufficiently in the record already before the jury,
15 even if you get the actual dailies and look at the transcripts,
16 to be able to argue that that statement not only impeaches them,
17 but is admissible as substantive evidence.

18 With all due respect, that's just basic evidence law
19 and the sufficient foundation has been laid. And I thought, I
20 thought that the Court agreed with that, that if --

21 THE COURT: As an abstract principle, of course I do.
22 But that's not how trials are run. That's not how trials are
23 managed. It's not you just throw it all up and decide what to do
24 later on. That's not how I run a trial, Mr. Kurland.

25 MR. KURLAND: Judge, I understand that, Your Honor.

1 But with respect to a particular sentence, if it's --

2 THE COURT: You know, I don't know how many angels can
3 dance on the head of a pin and I don't think you know, Mr.
4 Kurland. Let's not argue abstractions here. Okay? If you've
5 got a specific instance, if you can think of or bring to the
6 Court's attention a specific witness whose trial testimony
7 contradicted something the witness said in the grand jury and,
8 when confronted with that prior statement the witness didn't
9 adopt it, then yes. That's what we're arguing about. But I
10 can't think of any of those instances. I honestly can't.

11 If you can, that's fine. But I can't think of any of
12 those instances.

13 MR. KURLAND: I'll give you one. When one of the
14 Duganne sisters, who I cross examined. She said, I showed her
15 her grand jury testimony because she said that she didn't name
16 other people from Baltimore who were part of the drug gang. And
17 I showed her her grand jury transcript where she said three or
18 four names, none of these defendants.

19 That's an example where I believe that the record is
20 sufficient that she has, that she testified before the grand jury
21 differently than her in-court testimony and it's sufficiently in
22 the record to allow that to be argued as substantive evidence,
23 that those other three people --

24 THE COURT: That there were other members of some
25 conspiracy?

1 MR. KURLAND: No. Specifically --

2 THE COURT: You didn't even need evidence to argue
3 that.

4 MR. KURLAND: But Judge, specific names of people,
5 specific names of people who were part of the Baltimore/Altoona
6 drug connection. There were three or four names that were,
7 that's in the record, that is --

8 THE COURT: Look, if that helps Mr. Gardner, I don't
9 expect there to be any objection from the government. And that's
10 fine. I mean, if that's the kind of thing you're talking about,
11 Mr. Kurland, I don't see any problem at all.

12 MR. KURLAND: I will, I will make my list of the things
13 that's consistent.

14 THE COURT: I think, I think that would be a wise, a
15 wise idea. Do you want to respond, Mr. Hanlon?

16 MR. HANLON: No, Your Honor, I profoundly do not care.
17 The government just had one thought about one of the other issues
18 that's been raised this morning. The possibility of a bench
19 warrant for Mr. Bacon. That's between the Court and the defense
20 and that's fine. But it does occur to us, it doesn't sound to
21 the government as though it's certain that this letter would come
22 in, whether or not Mr. Bacon comes in.

23 THE COURT: The letter's not coming in. I mean, it's a
24 prior inconsistent statement and he can be confronted with it.
25 But no, I don't think the letter's coming in.

1 MR. HANLON: If that's the case, is it appropriate to
2 subpoena Mr. Bacon and bring him back to court solely for
3 impeachment?

4 THE COURT: No. But Mr. Coburn insists that he's going
5 to elicit affirmative, probative evidence from Mr. Bacon.

6 MR. HANLON: That's what I wanted to clarify.

7 THE COURT: That's what you say, right, Mr. Coburn?

8 MR. COBURN: I don't want to mislead the Court.

9 THE COURT: No, of course not. I asked you
10 specifically about an hour and a half ago, is Mr. Bacon going to
11 offer affirmative, probative evidence, and you said yes.

12 MR. COBURN: Well, that's my view. I think it's
13 consistent with what's -- I mean, I'm not intending to ask him
14 about things other than, you know, what he said in the letter. I
15 mean, my view is that what is in the letter is not only -- first
16 of all, I think we should be entitled under these exceptional
17 circumstances, if we wanted to continue to impeach him, to do
18 that. I mean, I think that's critical.

19 THE COURT: No. I'm not going to issue a warrant for a
20 government witness who's been thoroughly cross examined so that
21 he can be arrested and brought back to court in order to be
22 further impeached. Now, you know, Mr. Coburn --

23 MR. COBURN: I don't mean to push Your Honor on this.
24 I know this has been a long morning already.

25 THE COURT: It's okay to push.

1 MR. COBURN: I do think, it is my view that to ask him
2 about the things he said in that letter is affirmative probative
3 evidence.

4 THE COURT: It's not affirmative probative evidence.

5 MR. COBURN: Well, I mean, if I ask him about what he
6 wrote in there and he admits it, then I've got him on direct
7 examination --

8 THE COURT: Why do we think he's going to deny writing
9 the letter? Aren't you proffering that it's in his handwriting?
10 The government hasn't suggested to you that he didn't write it.
11 Right?

12 MR. COBURN: They haven't suggested that.

13 THE COURT: Did the agent question Mr. Bacon about the
14 letter when he saw him this weekend or spoke to him?

15 MR. COBURN: I'm sure he did.

16 THE COURT: I mean, I presume he did.

17 MR. HARDING: Yes, he did, Your Honor.

18 THE COURT: Okay. So my only point is --

19 MR. HARDING: He hasn't shown the letter to Mr. Bacon
20 and Mr. Bacon doesn't specifically remember this letter.

21 THE COURT: But he admits to writing a letter or
22 sending at least one letter to Mr. Gardner?

23 MR. HARDING: What he said was that if I wrote a letter
24 to Gardner, at least -- Agent Klas is here, perhaps we should ask
25 him. As I understand it from Agent Klas, the response was

1 something like, well, if I wrote a letter to Gardner it was
2 because I was trying to deflect him from thinking I was a snitch.
3 I was very afraid at that point and I wanted to steer him off of
4 thinking I was a snitch.

5 THE COURT: Of course, that's exactly what Mr. Bacon's
6 going to say more likely than not. But Mr. Coburn --

7 MR. COBURN: I actually was getting up to the podium
8 for something different.

9 THE COURT: I know. I know. Go ahead.

10 MR. COBURN: I was hoping to say just one sort of
11 totally non-controversial thing for a couple of seconds.

12 THE COURT: What a challenge.

13 MR. COBURN: Yeah, it will be. My plane is at 5:30.

14 THE COURT: Bye.

15 MR. COBURN: I was thinking about leaving, I cut it
16 fairly close, but if I leave at four I think I can make it. I
17 just wondered if Your Honor would be kind enough to say something
18 to the jury about the fact that I, you know, we were supposed to
19 be off and I've got something I couldn't, a proceeding I couldn't
20 change.

21 THE COURT: Of course. We need to take a recess.

22 So let me go back to Ms. Rhodes and Mr. Martin, Mr.
23 Kurland, see what we've got today.

24 MR. COBURN: Thank you, Your Honor.

25 THE COURT: Ms. Rhodes?

1 MS. RHODES: Your Honor, we have the coming at one, I
2 think, two witnesses. Mr. Crowe's first witness is here. And I
3 believe Mr. Coburn was going to read, was going to put in some
4 transcript testimony. And then I'm not sure if somebody else is
5 here yet. I need to check on that over the break.

6 THE COURT: One of your witnesses?

7 MS. RHODES: Yes.

8 THE COURT: Who do you have at one?

9 MS. RHODES: We have somebody from AT&T and somebody
10 from Sprint. Okay.

11 THE COURT: And who's the third witness that you need
12 to check on?

13 MS. RHODES: That would be Coach Lynch. And I want to
14 make a proffer of his, of what he would say.

15 THE COURT: I'm not going to take the time to do that
16 in the courtroom. That's why I asked you to do the affidavit.

17 MS. RHODES: I understand, Your Honor. But when Mr.
18 Harding and I spoke to him on the phone, Mr. Harding indicated
19 there were things he was not going to stipulate to. And so I
20 feel like the only way I can get this --

21 THE COURT: No. No. Not only that, is he here now?

22 MS. RHODES: He was supposed to be here at 11.

23 THE COURT: All right. Please send him out of the
24 courthouse.

25 MS. RHODES: He was supposed to wait on the third

1 floor.

2 THE COURT: Well, I don't want him in the courthouse.

3 MS. RHODES: All right.

4 THE COURT: All right? So please, we're going to take
5 a recess. Go up to him immediately, thank him very much for his
6 trouble, ask him to leave the courthouse immediately.

7 MS. RHODES: All right. Yes, Your Honor.

8 THE COURT: I do not want him running into the juror in
9 the hallway.

10 MS. RHODES: Your Honor, I instructed him to wait on
11 the third floor on a bench. Okay?

12 THE COURT: I appreciate that, Ms. Rhodes. All right.
13 Let's stand in recess for 15 minutes.

14 (Recess at 11:00 a.m.)

15 (Defendants present in courtroom.)

16 THE COURT: We'll have the jury, please. The jury is
17 coming out, folks.

18 (Jury enters the courtroom.)

19 THE COURT: Members of the jury, good morning and thank
20 you for your bountiful patience this morning. We're ready to
21 continue. We trust you had a pleasant weekend.

22 Mr. Crowe, you may call your witness.

23 MR. CROWE: Your Honor, we call Joyce Martin Parsons.

24 THE COURT: Ms. Martin, would you stand and be sworn by
25 the clerk, please? I'm sorry. Was it Ms. Parsons?

1 MR. CROWE: Parsons.

2 JOYCE PARSONS, DEFENDANT MARTIN WITNESS, SWORN

3 THE WITNESS: Yes.

4 THE CLERK: Be seated. Please speak directly toward
5 the mike. State your name and spell it for the record, please.

6 THE WITNESS: Joyce --

7 THE COURT: I'm sorry, Ms. Parsons. You can pull that
8 microphone down and put in a comfortable place for you, but we
9 need you to speak directly into it. You can pull it lower if you
10 want to. Thank you.

11 THE WITNESS: Joyce Parsons. P-A-R-S-O-N-S.

12 DIRECT EXAMINATION

13 BY MR. CROWE:

14 Q Mrs. Parsons, I'm going to ask you to do something a little
15 unnatural. Although I'm going to be asking you the questions and
16 it's normal for you to be looking at me, could you try, if you
17 can remember, to look at the jury for most of the answers?

18 A Yes.

19 Q Mrs. Parsons, how old are you?

20 A 54.

21 Q Okay. And are you presently working?

22 A Yes.

23 Q And where are you working?

24 A Dollar General.

25 THE COURT: I'm sorry. Ms. Parsons, we need you to get

1 closer to the microphone.

2 A Oh, Dollar General.

3 Q And how long have you been working at the Dollar General?

4 A Two years and a couple months.

5 Q And what is your position there at the Dollar General?

6 A Assistant manager.

7 Q Okay. And you're, in fact, the mother of Shelly Wayne
8 Martin?

9 A Yes, I am.

10 Q Now, what's your son's birthday?

11 A X/XX/78 (redacted).

12 Q Okay. So he would have just turned 30 years old in July, is
13 that right?

14 A Yes.

15 Q And where was he born?

16 A Roanoke, Virginia.

17 Q And do you recall about how old your son was when you first
18 moved to the Baltimore area?

19 A Nine years old.

20 Q Okay. And where did the family live initially?

21 A On Stevens Wood.

22 THE COURT: I'm sorry.

23 A When I came to Maryland?

24 Q Yes.

25 A We lived on Stevens Wood Road.

1 Q And was that a place where you lived with his sister, Mrs.
2 Broomfield?

3 A Yes.

4 Q Okay. And where did you later move, if you can recall?

5 A Live in Latin Hill.

6 Q Okay. And did there come a time when the family moved from
7 Baltimore County to Baltimore City?

8 A Yes.

9 Q Do you remember what grade your son, Shelly Wayne Martin,
10 was when you made that move?

11 A He was in junior high. Junior high.

12 Q Junior high. Okay.

13 A Yes.

14 Q And sort of the 7th, 8th or 9th grade, to the best you can
15 recall?

16 A Yes.

17 Q Okay. Now, where were you living in the beginning of 2002?

18 A I was living on Cree Court, Two Cree Court.

19 Q Okay. And when did you, do you recall when you bought that
20 house?

21 A February, 2002.

22 Q Okay. And where were you living before you bought the
23 house, if you remember?

24 A Cresas Point (phonetic).

25 Q Pardon?

1 A Cresas Point Apartments.

2 Q Okay. And was that street address for that Two Sunmar Court
3 in Randallstown?

4 A Sunmar Court, yes.

5 Q Sunmar Court. Excuse me. And when was, when was it, if you
6 can recall, that you actually moved from Sunmar, Sunmar Court to
7 Two Cree Court?

8 A I moved in February to Cree Court.

9 Q Okay. And did you purchase that house yourself?

10 A Yes, I did.

11 Q And did you purchase it with any contribution from your son,
12 Mr. Martin?

13 A No, I didn't.

14 Q Was it all your own money?

15 A Yes, it was.

16 Q Okay. Now, when Mr. Martin moved into Two Cree Court, did
17 he have his own bedroom?

18 A Yes, he did.

19 Q And do you recall where that bedroom was?

20 A In the basement.

21 Q Okay. And had he, in fact, just come home from serving a
22 prison sentence and from some time in a halfway house?

23 A Yes.

24 Q Do you recall about when it was in 2000 that he came home?

25 A No.

1 Q Pardon? I'm sorry. 2002 that he came home. Thank you, Mr.
2 Harding.

3 A I guess it was like in February.

4 Q Okay.

5 A Or March.

6 Q And did he come first to Sunmar Court or did he come
7 directly to Two Cree Court, if you can recall?

8 A Sunmar Court.

9 Q Came first to Sunmar Court?

10 A Yes.

11 Q Okay. Now, I'm going to show you some photographs. I'm
12 going to show you first what we have marked as Defendant Martin
13 Exhibit One. I'm sorry. This is Defendant Martin, I believe,
14 Exhibit 14-A. Can you tell me what is depicted in that
15 photograph?

16 A Yes. That's the front of my house.

17 Q Okay. And is your house what appears to be an end unit in a
18 series of row homes or town homes?

19 A Yes.

20 Q Okay. Can you see the area where it appears that the siding
21 changes and it becomes, it becomes white?

22 A That's the end of my house.

23 Q Okay. So is this area where the white is shown, is that
24 part of your house or is that part of the adjoining unit?

25 A That's part of the adjoining unit.

1 Q So yours, essentially, stops where we see, where we see,
2 where we see the wood end there, is that correct?

3 A Yes.

4 Q Okay. Let me show you next what is, has been marked as,
5 will be marked as Defendant Martin's Exhibit 14-B. Can you tell
6 me what that shows?

7 A That's going down towards the basement.

8 Q Okay. And where would the person, where would a person be
9 standing to have that view of the stairway going down to the
10 basement?

11 A When they come in the front door.

12 Q Okay. So if you looked down there, that's the basement, is
13 that correct?

14 A Yes.

15 Q Now, you said that your son's bedroom was in the basement.
16 Was the basement down those stairs?

17 A Yes.

18 Q Can you see the door to his, to what was his bedroom in this
19 photograph?

20 A No.

21 Q Is it -- what is it, some place to the left, then?

22 A Yes.

23 Q Okay. If you'll also notice, there's an area where it
24 appears that there are stairs going up. Are there, in fact,
25 stairs that go up that are right, right next to the stairs going

1 down to the basement?

2 A Yes.

3 Q And where do those, where do those stairs going up lead to?

4 A The first floor.

5 Q Okay. And what's on the first floor?

6 A Living room, dining room, half bath, and a kitchen.

7 Q Okay. Show what you would be marked as Exhibit 14-C. Can
8 you tell me what that photograph depicts?

9 A That's leaving the first flooring going to the, it's a
10 landing and then it's up another flight of steps to the bedroom.

11 Q Okay. So is this area, is this area right here the landing
12 that you're speaking about?

13 A No.

14 Q Okay. Is this area right here the first floor where you've
15 testified that the living room, the kitchen, the dining room, and
16 the bathroom are?

17 A Yes.

18 Q And is it then these stairs that we see here that go up to
19 the second floor?

20 A Yes.

21 Q Now, do those stairs go directly to a second floor or do
22 they go to a landing?

23 A Go to a landing.

24 Q So you then do basically a 180 degree turn to go up another
25 short flight of stairs to get to the second floor?

1 A Yes.

2 Q Thank you. Show you what will be marked as Exhibit 14-D.
3 Can you tell me what that picture shows?

4 A Going to the landing to the second floor.

5 Q Okay. And then, finally, what is 14-E? Can you tell me
6 what that, what is shown in that photograph?

7 A That's my bedroom.

8 Q Okay. And that's on the second floor, is that correct?

9 A Yes.

10 Q And then, finally, what will be 14-F. Can you tell me what
11 is shown in that photograph?

12 A That's Shelly's bedroom.

13 Q Now, all of these photos were taken a few weeks ago, is that
14 correct?

15 A Yes.

16 Q Is this the same furniture in Shelly's bedroom, which is
17 shown on 14-E, as was in fact there in March and April of 2002,
18 if you recall?

19 A Yes.

20 Q Okay. Same furniture?

21 A Yes.

22 Q Okay. Now, I want to direct your attention to Sunday, March
23 24, 2002. And I realize we're speaking about a time that's more
24 than six and a half years ago. Can you remember what you were
25 doing that day?

1 A No, I don't.

2 Q Do you remember where you were working that day?

3 A I was working at Giant's.

4 Q Okay. Let me show you what is a payroll stub, which has
5 come out of Government's Exhibit W-5J. This is a payroll stub.
6 Actually, let me show you a different one. I don't know the
7 extent to which you can make it out there. As you can see, that
8 is a payroll stub which is dated March 29, 2001, which is almost
9 a year earlier than the period we're talking about. Is that a
10 payroll stub from the Giant at which you were working at that
11 time?

12 A Yes.

13 Q And how long had you been working at the Giant?

14 A 17 years.

15 Q Okay. And is that 17 years as of 2001 or 2002 or is that --

16 A Oh, no.

17 Q Okay. When did you stop working at the Giant?

18 A 2005.

19 Q Okay. About the same time you got the job at the Dollar
20 General store, is that right? This appears to show that your
21 year-to-date earnings through March 29 of 2001 was roughly in the
22 neighborhood of \$8800. Does that sound right?

23 A Yes.

24 Q So would the money that you'd been making at the Giant be
25 roughly, on an annual basis, be roughly in the neighborhood of 34

1 or \$35,000?

2 A Yes.

3 Q What hours did you work when you were working at the Giant?

4 A I work at night.

5 Q Okay. And specifically, directing your attention to March,
6 2002. What would have been the hours that you would have worked?

7 A 11 to 7:30 or 12 to 8:30.

8 Q And what would differentiate between an 11 to 7:30 or a 12
9 to 8:30 shift?

10 A Sundays sometime I go in early because I used to be the
11 manager.

12 Q Okay.

13 A Some weeks.

14 Q So you had to be there a little bit early to get things
15 ready for people, is that right?

16 A Yes.

17 Q And what was, what were you doing there?

18 A I was a stock person.

19 Q So restocking the shelves at night, is that right?

20 A Yes.

21 Q Okay. And did you typically work on Sunday nights?

22 A Yes.

23 Q What time would you generally arrive home?

24 A Between 7:30 and 8:30 in the morning.

25 Q And when you got home at 7 or 8:30 in the morning after

1 working that long evening shift, what would you typically do?

2 A Sometime I'd go and eat breakfast and sometime I go straight
3 upstairs.

4 Q Okay. And going straight upstairs is straight upstairs to
5 the second floor bedroom that we discussed a second ago?

6 A Yes.

7 Q Okay. Did your son have a female friend when he first came
8 home in February of 2002 or so?

9 A I don't know.

10 Q Okay. Were you, did you know a woman by the name of McCoy
11 or Kiki?

12 A Kiki.

13 Q Okay. And do you know whether or not she was a friend of
14 your son's at that time?

15 A I don't know.

16 Q Okay. How long have you known this person, Lakeisha McCoy
17 or Kiki?

18 A For about a couple years.

19 Q Okay. And that was a couple of years as of when?

20 A Before I moved to Cree Court.

21 Q So she was a friend of your son's before he moved to Cree
22 Court, is that right?

23 A Yes.

24 Q Okay. And obviously, you don't remember what happened the
25 night of Sunday, March 24 or the following day, Monday, of March

1 25, is that right?

2 A No.

3 Q Now, do you remember that Mr. Martin and your son, at Two
4 Cree Court, were searched in mid April of 2002?

5 A Yes.

6 Q And how did you learn about this?

7 A I came home from work. The front door was locked. The
8 screen door was locked. I couldn't get in my own house. So I
9 went down my sister house. And I came back home and we opened
10 the screen door. And I went in and found out that they had been
11 in the house.

12 Q Okay. And by "they", you mean that law enforcement people
13 had been in the house?

14 A Yes.

15 Q Now, I understand you typically would not lock the screen
16 door, is that correct?

17 A No.

18 Q What was the condition of the normal entry door, the one
19 that we've seen on Government's Exhibit 14-A?

20 A It was, the hinges was broke off the front door. The side
21 of the door was busted in.

22 Q And where were you returning from at the time that you went
23 into the house?

24 A I was returning from work.

25 Q Okay. And that's because you would have been working your

1 normal overnight shift at Giant, is that correct?

2 A Yes.

3 Q Do you know a lawyer by the name of Harold Glaser?

4 A Yes.

5 Q And was he, in fact, your son's lawyer on some state charges
6 that he faced in 2002?

7 A Yes.

8 Q And you understand that those are some of the same charges
9 that are being tried in this court right now?

10 A Yes.

11 Q Did you have anything to do with raising money to hire Mr.
12 Glaser and paying Mr. Glaser?

13 A Yes.

14 Q Would you tell the members of the jury what you did?

15 A Well, first, I asked my sister to loan me some money and
16 then I'll pay her back gradually. And then through the time I
17 made installment payments with Glaser.

18 Q Okay.

19 A And he told me I had to have a certain amount of money
20 before we go to court.

21 Q Okay. And do you remember how much Mr. Glaser was paid in
22 total?

23 A \$10,000.

24 Q Okay. And what was the source of that \$10,000?

25 A Repeat yourself.

1 Q Yeah. Who supplied the money to pay Mr. Glaser?

2 A I did.

3 Q Okay. Did you have any assistance from anybody?

4 A My sister.

5 Q Okay. And would that sister be the same Mrs. Broomfield?

6 A Yes.

7 Q Do you know at about what time it was, and if you don't
8 remember, it's fine, but do you remember about when it was that
9 you started getting the money together for Mr. Glaser?

10 A Before he had to go to court. But I don't remember the
11 date.

12 Q You don't remember the date. That's fine. It would be
13 unusual, unusual if you would.

14 Let me show you, finally, what's been marked as
15 government -- excuse me -- Defendant Martin Exhibit Five. Can
16 you tell me what that is?

17 A It's a ticket stub.

18 Q Okay. And do you know where this ticket stub was found?

19 A It was in a drawer in Wayne's bedroom.

20 Q And did you have anything to do with getting that ticket
21 stub to lawyers who were representing Mr. Martin?

22 A Yes.

23 Q And what did you do?

24 A I, really, I don't recall. I mailed it or I gave it to the
25 lawyer.

1 Q But you know you had something to do with getting it to the
2 lawyer, is that correct?

3 A Yeah.

4 Q I'll also show you Defendant Martin's Exhibit 6, which is a
5 Capital One, which is a Capital One account summary. Did you
6 have anything to do with getting this exhibit, getting this
7 matter to lawyers who were representing Mr. Martin?

8 A Yes.

9 Q And what did you do?

10 A I don't recall how I got it to him, but I got it to a
11 lawyer. I know.

12 Q Was this something that had come in -- when did this come
13 in, if you can recall?

14 A When did it come in the mail? I don't know what day it came
15 in the mail.

16 Q Okay. And finally, I'm going to show you what's been marked
17 as Defendant Martin's Exhibit Seven. Is that also a Capital One
18 paper?

19 A Yes.

20 Q And did you have anything to do with getting that to the
21 lawyers for Mr. Martin?

22 A I don't recall.

23 Q Okay. Fair enough. May I just speak with Mr. Pyne for a
24 second?

25 THE COURT: Mr. Crowe, it's probably perhaps

1 unnecessary, but let me suggest that, with the agreement of
2 counsel, that you use a black marker to delete account number
3 information from that exhibit before it's finally --

4 MR. CROWE: Your Honor, the difficulty with that is
5 that the account number matches up with the account number which
6 is shown on, shown on the movie receipt, which the government
7 introduced.

8 THE COURT: Okay.

9 MR. CROWE: So for that reason, we'd prefer to leave it
10 on.

11 THE COURT: Okay. Fine.

12 MR. CROWE: Thank you. I have nothing further.

13 THE COURT: All right.

14 MR. COBURN: Excuse me, Your Honor. Just want to let
15 the Court know we're going to have some questions, also. Should
16 we go after the government?

17 THE COURT: Yes.

18 CROSS EXAMINATION

19 BY MR. HANLON:

20 Q Ms. Parsons, good -- it's still good morning. Good morning
21 to you.

22 A Good morning.

23 Q You were asked a few questions by Mr. Crowe near the end of
24 your testimony about some credit card bills and also about a
25 movie stub. With respect to the movie stub, you found that in

1 your house and then you turned it over to your son's attorney, is
2 that right?

3 A Yes.

4 Q How did you, did you know to look for the movie stub because
5 your son asked you to look for the movie stub?

6 A Yes.

7 Q You were also asked, and this is subject, Your Honor, to
8 whatever redactions the defense may want to make, but I would
9 like to show the credit card bill to Ms. Parsons.

10 THE COURT: I think it's all in, Mr. Hanlon.

11 Q Zooming in just a little bit, Ms. Parsons. Do you see the
12 credit card bill there?

13 A Yes.

14 Q In this particular instance, there's a balance in May of
15 2002 of about \$428, is that correct?

16 A Yes.

17 Q Now, your son gets arrested at some point in 2002 and he's
18 been in jail for some time, is that right?

19 A Yes.

20 Q Prior to your son getting locked up, who was responsible for
21 paying the balance on this credit card bill?

22 A No one.

23 Q No one paid it?

24 A No.

25 Q Do you know if your son was making payments on it?

1 A No.

2 Q You don't know?

3 A I don't know.

4 Q You were not making payments or helping him with this
5 balance, is that correct?

6 A No.

7 Q You were asked some questions about getting money together
8 for Mr. Glaser on your son's behalf. And you had to come up with
9 \$10,000 to pay for the lawyer fees, is that right?

10 A Yes.

11 Q Mr. Martin would have known that you were getting that money
12 together, that you were making arrangements for him to have a
13 lawyer, is that correct?

14 A Yes.

15 Q And he would have been aware of the difficulty you were
16 having getting the money together, is that fair to say?

17 A Yes.

18 Q You were asked about, by Mr. Crowe about the search warrant
19 that happened at your house in April of 2002. I'm sure that's
20 not a pleasant memory. But I do need to ask you a few questions
21 just about some items.

22 Government's Exhibit W-5F is this piece of paper, Ms.
23 Martin. Do you see it on your screen?

24 A Yes.

25 Q This is a, appears to be a phone bill, is that correct, a

1 Sprint phone bill?

2 A Yes.

3 Q And it's in the name of your son, Wayne Martin, is that
4 correct?

5 A Yes.

6 Q Do you recognize this number, 410-963-3912?

7 A No, I don't.

8 Q Don't know whether or not your son, Wayne, or any of your
9 children ever used this phone number?

10 A No.

11 Q Do you know one way or the other, Ms. Parsons, whether this
12 particular phone bill was found at Two Cree Court during the
13 search warrant we talked about?

14 A Repeat yourself.

15 Q Do you know whether or not this phone bill was found during
16 the search warrant? Did you ever see a phone bill like this one
17 for this number in your house at Two Cree Court before that
18 search warrant happened?

19 A No, I didn't.

20 Q One more thing about this phone bill. Again, W-F5. I asked
21 you about the service name and it was Wayne Martin. And then
22 there's an address there of 106 Sunmar Court, Baltimore,
23 Maryland. Am I reading that right?

24 A Yes.

25 Q If I heard you correctly, is that the address that your

1 family lived at before moving to Cree Court? Did I get that
2 right?

3 A Yes.

4 Q Government's Exhibit W-5G. Another piece of paper which has
5 been marked as evidence in this case. Have you ever seen this
6 piece of paper relating to the funeral of a Darryl and Anthony
7 Wyche? Did you ever see this kind of paper at your house at Two
8 Cree Court?

9 A No.

10 Q Going to show you a few photographs, W-5C. I'll zoom in a
11 little bit, Ms. Parsons. Do you recognize this photograph?

12 A Yes.

13 Q Do you recognize any, either of the gentlemen in this
14 photograph? Do you recognize that person?

15 A That's Wayne.

16 Q Your son, Wayne?

17 A Yeah.

18 Q And then over on the other side, do you recognize that
19 gentleman?

20 A I can't make it out.

21 Q Can't make out that gentleman?

22 A No.

23 Q Government's Exhibit W-5A, another photograph. Do you
24 recognize this individual here? And I can zoom in a little bit.
25 Do you recognize that gentleman?

1 A Can't even see the face.

2 Q Can't quite make out the face?

3 A No.

4 Q Last photograph. W-5B. It's a bit dark, Ms. Parsons, but
5 do you recognize that gentleman?

6 A What gentleman?

7 Q I think that probably answers that question. Your Honor,
8 can I approach?

9 THE COURT: Yes.

10 Q W-5C. Let me see if I can show it to you in person, ma'am.
11 Putting it in front of you. You've identified your son in the
12 photograph. And then there's another individual on the left side
13 of the photo. Do you recognize the guy on the left?

14 A Yeah. That's Goo.

15 Q Goo?

16 A Yeah.

17 Q And is Goo's full name Shawn Gardner?

18 A Yes.

19 Q And Government's Exhibit W-5A. How about that gentleman
20 there in that photograph?

21 A That's the same person.

22 Q Mr. Gardner, Goo?

23 A Yes.

24 Q And again, finally, W-5B as in boy. How about this
25 gentleman here?

1 A That's Wayne.

2 Q Thank you, ma'am. Putting up on the screen in front of you,
3 Ms. Parsons, this is Government's Exhibit W-5H, some handwritten
4 notes. It says "surveillance equipment" at the top and "spy
5 outlet" in the middle. Do you see that language there at the top
6 and in the middle?

7 A Yes.

8 Q Have you ever seen, did you ever see notes like these around
9 the house at Two Cree Court?

10 A No.

11 Q Do you know whose handwriting it is on these two pieces of
12 paper? I'm sorry. Do you know whose handwriting it is on this
13 one piece of paper?

14 A No.

15 Q Mr. Crowe asked you a few questions about, I believe it's
16 W-5 -- W-5J. Let me ask you just a few things about a few of the
17 pages in the address book, Ms. Parsons. First of all, very front
18 page. That's your name on the front page on the top there, is
19 that right?

20 A Yes.

21 Q And this is your address book, which is taken around about
22 the time of the search warrant at your address at Two Cree Court,
23 is that right?

24 A Yes.

25 Q Inside one of the pages there's a yellow post-it note that

1 we put here to help me find it. But there's some handwriting
2 here that reads, Goo call, Darryl give me a hundred dollars. Do
3 you see that?

4 A Yes.

5 Q Can you tell me whose handwriting "Goo call, Darryl give me
6 a hundred dollars" is?

7 A That's my handwriting.

8 Q And do you know what this would have been? Is this a phone
9 message you would have written down? Do you know what this
10 language means?

11 A Just Goo called.

12 Q So it's a message from Goo, calling that Darryl had given
13 him a hundred dollars?

14 A That's what I wrote down, yes.

15 Q Do you know who Darryl is?

16 A I know two Darryls. I don't know which one it was.

17 Q What are the names of the two Darryls that you know?

18 A Darryl White and Darryl Bacon.

19 Q So there's a Darryl Bacon, that's one?

20 A Um-hum.

21 Q That's a yes, ma'am?

22 A Yes.

23 Q That's a yes?

24 A Yes.

25 Q And there was another. Did you say Darryl, what was the

1 other one?

2 A White.

3 Q White, as in the color white?

4 A I guess that's how it was.

5 Q Have you ever known a Darryl Wyche?

6 A I guess that's what his last name was, Wyche.

7 Q So maybe not White. Maybe it was Darryl Wyche?

8 A Uh-huh.

9 Q Another part of the phone book. And again tell me if you
10 can't see this. But there's another handwritten notation that
11 reads "Goo turn himself in, Goo call forward" and then there's a
12 two in parentheses. Do you see that?

13 A Yes.

14 Q Do you know, would this have been another message that you
15 would have received and written down?

16 A For him to call. That's what it seems like now.

17 Q Does that appear to be your handwriting or someone else's
18 handwriting?

19 A That's my handwriting.

20 Q So Goo called and you wrote down a message, is, he was
21 turning himself in and to have calls forwarded. Am I reading
22 that correctly?

23 A Yes.

24 Q This is another notation in your book that reads "Goo girl",
25 is that correct?

1 A Yes.

2 Q And then under the notation "Goo girl" there's a number,
3 335-1517. That appears to be a phone number, is that right?

4 A Yes.

5 Q And then the name Shanika?

6 A Yes.

7 Q And then there's an address, 82 Ambo, A-M-B-O, Circle?

8 A Yes.

9 Q Would this be contact information for a girlfriend of Goo,
10 Shawn Gardner, that you were writing down?

11 A Yes. It's probably when his daughter was born and I called
12 her about.

13 Q Are you able to make that out, Ms. Parsons, here?

14 A Yes.

15 Q And that reads "Shawn Gardner" and there's an ID number at a
16 location in Jessup, Maryland, is that right?

17 A Yes.

18 Q Would this be contact information for Mr. Gardner in a time
19 when he was locked up some place?

20 A Yes.

21 Q Down here there's another number. If I'm reading that
22 right, is that Goo again?

23 A Yes.

24 Q And it appears to be crossed out in this case. And I'll see
25 if I can make it out. Does it read 443-309, and I think that's

1 an 8347. Have I read that correct?

2 A It looks like it, yes.

3 Q And this is a number that gets crossed out at some point?

4 A Yes.

5 Q Here again, is there a number for Goo at 410-446-6508? Have
6 I read that correct?

7 A Yes.

8 Q And here up top, another crossed-out number that says Goo.
9 Is that right?

10 A Yes.

11 Q And that's, if I'm reading it right, 410-977-6145? Do I
12 have that correct?

13 A Yes.

14 Q Here are a couple of notations. We've established that
15 sometimes you would write phone numbers in your book here, but
16 sometimes you would also take down messages for people and
17 calendar things, like you have here. This is Saturday, Friday,
18 things like that? Is that right, Ms. Parsons?

19 A Yes.

20 Q In this case you've written down a notation, Goo got out 18
21 January. Is that right?

22 A Yes.

23 Q And then right under Goo it indicates that Rodney equals 16.
24 Does that mean that someone named Rodney is getting out on the
25 16th of January?

1 A I don't recall. I don't recall what that was.

2 Q That's fine. I've read Goo got out 18 January, I've read
3 that correctly, is that right?

4 A Yes.

5 Q But you're not sure what Rodney equals 16 is?

6 A No.

7 Q Is that your handwriting, Ms. Parsons?

8 A Yes.

9 Q But you're just not sure, 100% sure of the meaning of that
10 notation?

11 A Um-um.

12 Q This is a notation for a Wayne cell phone, is that correct,
13 ma'am?

14 A Yes.

15 Q And it looks like there was a 443-677-3200 that is crossed
16 out in blue ink, is that right?

17 A Yes.

18 Q And then underneath, written in blue ink, is an 838-1933, is
19 that right?

20 A Yes.

21 Q Just to emphasize those last four digits. The last four
22 digits are 1933, for the record, is that right, ma'am?

23 A Yes.

24 Q A couple of numbers here. There's a number for a Goo, is
25 that correct, in black ink?

1 A Yes.

2 Q And then the number, there's a four, which I gather is
3 probably the beginning of a area code that didn't get finished.
4 Is that right, Ms. Parsons?

5 A Yes.

6 Q And then the rest of the Goo number is 984-0930, is that
7 correct?

8 A Yes.

9 Q And then over on the other side of this particular page is
10 Wayne M. Is that Wayne M as in Wayne Martin, do you know?

11 A I don't know.

12 Q That's fine. And there's a couple of numbers. There's a
13 Wayne -- maybe this is part of the first number. Wayne M 635 765
14 or S. Is it possible that's something other than a phone number,
15 ma'am?

16 A I don't know, I don't know what that was.

17 Q And then underneath that there's an 866 567. Do you know
18 what those numbers mean?

19 A No.

20 Q There's a notation for a Darryl Bacon. Is that the Darryl
21 Bacon that you testified about a few minutes ago, one of the
22 Darryls that you know?

23 A Yes. Uh-huh.

24 Q And Mr. Bacon is listed here as having a home, is that an H
25 as in home number, 175-6451. Am I reading that correct?

1 A That's his ID number. That's not an H. That's an ID
2 number.

3 Q Got you. That's an ID number. I appreciate that. Thank
4 you. So that's his ID number. And there's a 401 East Eager
5 Street. What's East Eager Street, do you know?

6 A That's a jail Downtown.

7 Q And then there's a Wood. Do you know who Wood is, by any
8 chance?

9 A No, I don't recall that. I don't know what that was.

10 Q Here's some notes with some numbers and things. Does Wayne
11 appear to be a reference to your son, Wayne Martin?

12 A Yes.

13 Q And then there's some numbers here. Are these dollar
14 figures. Do they look like dollar figures to you?

15 A Yes.

16 Q Do you have any idea, Ms. Martin, what it was that is being
17 calculated here in terms of these various dollar figures for
18 Wayne?

19 A I was adding up my bills, look like. Monthly bills.

20 Q Do you have any idea what these numbers up above here would
21 have been for Wayne ending in 265?

22 A No.

23 Q Here's a number for Shelly, is that correct?

24 A Yes.

25 Q And do you know, ma'am, is that a phone number or is that

1 another kind of number?

2 A That's his father phone number.

3 Q And is this Mr. Martin, your son, Mr. Martin's father?

4 A Yes.

5 Q Is this another number, information for Goo, for Mr.
6 Gardner, ma'am?

7 A Yes, I guess.

8 Q And if I'm reading that correctly, is that a 56, it looks
9 like a 2, 9418?

10 A Yes.

11 Q Now, finally, I believe, there's another phone for a Shelly.
12 Is that a reference to your son, Mr. Martin, or to Mr. Martin's
13 father?

14 A His father.

15 Q Ms. Parsons, at some point did you sign some documents on
16 your son's behalf, legal papers and things like that, that he
17 wanted to, to do as part of his case?

18 A Yes. I was his power of attorney.

19 Q At the time that you signed these pieces of paper, did you
20 have an understanding of what they meant? Did you review them or
21 help your son draft them up or anything like that?

22 A No, I didn't.

23 Q You did not?

24 A No.

25 Q Showing you what's been marked into this case as part of

1 Government's Exhibit C-2. And give me just a moment, ma'am. One
2 part of Government's Exhibit C-2 is something called an
3 administrative notice. Am I reading that correctly on the
4 screen?

5 A Yes.

6 Q And then there's a whole bunch of questions in this
7 administrative notice. And there's some references to your son,
8 Shelly Wayne Martin, is that correct?

9 A Yes.

10 Q At the very end of this particular piece of paper, there's
11 this reference here, there's a page called jurat, and it says
12 it's subscribed to and sworn to, and then there's the name, if
13 I'm reading it correctly, Joyce Ann Martin on February 12th of
14 2005, is that right?

15 A Yes.

16 Q Is that your signature there, Ms. Parsons?

17 A No, it's not.

18 Q That's not your signature there?

19 A No.

20 Q Is there anyone else who goes by the name of Joyce Ann
21 Martin?

22 A Not that I know of.

23 Q But you don't know who signed this or how it came to be
24 signed?

25 A No. That's not my writing. That's not my handwriting right

1 there.

2 Q Did you authorize anyone to sign this piece of paper on your
3 behalf?

4 A No.

5 Q Do you have any idea what a jurat is, J-U-R-A-T, that word
6 at the top of the page?

7 A No.

8 Q Do you know who Michelle Mitchell is, identified here as a
9 notary?

10 A I don't recall, I don't recall.

11 Q You don't recall her?

12 A Michelle Mitchell? Was she a notary public? Oh, yeah, I
13 think one time I went over her house.

14 Q One time. And did she notarize something for you?

15 A Yes.

16 Q But just so we're clear, that is not your signature there,
17 is that correct?

18 A No.

19 Q Do you recognize that signature here, which appears to read
20 Michelle Mitchell, signature of notary public?

21 A Yes.

22 Q And does that appear to be Ms. Mitchell's signature? Would
23 you recognize that?

24 A I wouldn't recognize it if it's her signature or not. But
25 she signed papers.

1 Q These various pieces of paper, did you ever deliver any of
2 them for your son? Did you ever take any of them to the post
3 office or put them in envelopes or anything like that?

4 A No.

5 Q Focusing on Government's Exhibit C-2 just for a second. I
6 showed you an administrative notice. I'm going to try to break
7 this apart without hopefully ruining the whole thing.

8 In an envelope. I'll zoom out a little bit. Tell me
9 if you have any difficulty seeing it, Ms. Parsons. The name at
10 the top is Shelly Wayne Martin at Two Cree Court, Randallstown,
11 Maryland. That's the return address on this envelope, is that
12 right?

13 A Yes.

14 Q And then it's addressed to Robert Harding at the U.S.
15 Attorney's office, is that right?

16 A Yes.

17 Q Is that your handwriting on these envelopes?

18 A It looks like it. I'm not sure.

19 Q This could be your handwriting?

20 A I'm not sure.

21 Q You're not sure?

22 A I'm not sure.

23 Q Let me show you some other envelopes which are also part of
24 the Government's Exhibit C-2. Another envelope, and the same
25 exhibit, also addressed to Robert Harding. This one in the name

1 of a Willie Edward Mitchell. Do you know if this handwriting is
2 yours?

3 A No. I'm not sure. No, that's not mine.

4 Q From your view, ma'am, and if you can tell, does the
5 handwriting on the two return addresses appear to be the same?

6 A No, they're not the same handwriting.

7 Q You don't think that's the same handwriting there?

8 A No.

9 Q Can you see the two references to Robert Harding here, the
10 two addresses on these two envelopes, both part of Government's
11 Exhibit C-2?

12 A Um-hum. Yes.

13 Q This one is on the one that was, that had a return address
14 to your son at Two Cree Court, is that correct?

15 A Repeat yourself, what you said.

16 Q You bet. The one at the top, I've put two envelopes up on
17 the screen at the same time, both of them have addresses of
18 Robert Harding. The one I circled has a return address on it to
19 Shelly Wayne Martin at Two Cree Court, is that right?

20 A Yes.

21 Q And then there's another one down here which has a return
22 address, it's a little bit blocked, but the name appears to be
23 Willie Edward Mitchell, is that correct?

24 A Yes.

25 Q Is the handwriting, we've talked about the handwriting up

1 here, is the handwriting on this one at the bottom, do you
2 recognize that handwriting or do you believe it to be yours?

3 A No.

4 Q How about the two handwritings, the two addresses to Mr.
5 Harding? Do those two handwritten addresses appear to be written
6 by the same hand?

7 A I don't know.

8 Q Showing you part of what's been entered into evidence, Ms.
9 Parsons, as Government's Exhibit C-6. This is a piece of paper
10 which is part of Government's Exhibit C-6, which is captioned
11 here or which is titled, A Motion to Dismiss for Lack of
12 Territorial Jurisdiction. Am I reading that right?

13 A Yes.

14 Q And at the top of this page the return address or the filing
15 part name is Shawn Earl Gardner, care of Joyce Martin at Two Cree
16 Court. Is that right?

17 A Yes.

18 Q Did you ever submit or help to prepare any of these pieces
19 of paper on Shawn Earl Gardner's behalf, Goo's behalf?

20 A Yes.

21 Q So you did some of these for Mr. Gardner?

22 A I didn't do no paper. I signed. I was his power of
23 attorney.

24 Q Did you sign any papers for Willie Edward Mitchell?

25 A No.

1 Q Do you know who Willie Edward Mitchell is?

2 A Yes.

3 Q Would you recognize him if you saw him?

4 A Yes.

5 Q Do you see him in court today, ma'am?

6 A Yes.

7 Q If you could, please identify him. Tell us where he is and
8 what he's wearing.

9 A He's right there. Bo.

10 Q Closest citizen to me, other than the attorney?

11 A Yes.

12 Q Your Honor, identifying the defendant, Mr. Mitchell.

13 THE COURT: So noted.

14 Q Would you recognize a Shelton Harris if you saw him in
15 court?

16 A Yes.

17 Q And do you see Mr. Harris in court?

18 A He's right over there.

19 Q And near the end of defense table?

20 A No. He right there. In the middle.

21 Q Can you tell us what color shirt he's wearing?

22 A Blue.

23 Q Your Honor, for the record, identifying Mr. Harris.

24 THE COURT: So noted.

25 Q Did you prepare any documents for Mr. Mitchell or Mr.

1 Harris, act as their powers of attorney or anything like that?

2 A No.

3 Q But you did for Mr. Gardner and you did for your son, Mr.
4 Martin?

5 A Yes.

6 Q The very last page of the same piece of paper I was asking
7 you. Is that your signature, Ms. Martin?

8 A Yes, that's my signature.

9 Q Identified as Martin/Parsons. Is that your full name?

10 A Yes.

11 Q Is that Mr. Gardner's signature below yours?

12 A No.

13 Q Did you sign this on his behalf?

14 A Yes, I did.

15 Q If you don't mind me asking, Ms. Parsons, what does PA stand
16 for? Is that power of attorney?

17 A Yes.

18 Q Did you deposit this document in the mail or file with the
19 court for Mr. Gardner or anything like that?

20 A No.

21 Q What did you do with this after it was executed and signed
22 off? Where did you actually take the piece of paper?

23 A Someone picked it up.

24 Q Do you remember who picked it up?

25 A I don't recall her name right offhand.

1 Q It was a legal document relative to a case that your son was
2 involved in. You don't remember who took it or anything like
3 that?

4 A I don't remember her name.

5 Q Was it a young lady that picked it up, a female?

6 A Yes.

7 Q Do you know if this was a lady who knew Mr. Mitchell or Mr.
8 Harris?

9 A Knew Mr. Mitchell.

10 Q It was someone who was attached to Mr. Mitchell or knew Mr.
11 Mitchell?

12 A Yes, uh-huh.

13 Q And this was the individual that came to your house and
14 picked up this legal document and took it away, is that correct?

15 A Yes.

16 Q Was it your understanding it was going to be filed with the
17 court or sent to the U.S. Attorney's office or the court or
18 something like that?

19 A Filed with the court, I think it was.

20 Q On the subject of these court pleadings, Ms. Parsons, who
21 asked you or who told you to sign these documents? How did you
22 get involved in it?

23 A My son told me to sign for him.

24 Q Your son, Mr. Martin?

25 A Yes.

1 Q Now, at some point you also became Mr. Gardner's power of
2 attorney. How did that come about?

3 A Because I was his Godmother.

4 Q You're Mr. Gardner's, Goo's Godmother?

5 A Yes.

6 Q Who actually approached you and asked you to do that? Did
7 Mr. Martin ask you to do that for Mr. Gardner or Mr. Gardner
8 asked you to do it himself?

9 A Asked me to do it himself.

10 Q Mr. Gardner did?

11 A Yes.

12 Q Now, at some point there was some testimony today about a
13 movie stub that was found in your house that you turned over to
14 the lawyers working with your son, is that right?

15 A Yes.

16 Q And the date on that stub, which I'm not sure I have in
17 front of me, is March 24th of 2002. Does that sound correct?

18 A Yes.

19 Q Now, your son was, ended up getting arrested and went into
20 jail several weeks after that movie, about three weeks after
21 March 24th of 2002. Does that sound right?

22 A I'm not sure.

23 Q To your knowledge, does your son typically keep movie stubs
24 from the movies he goes and sees?

25 A I don't know.

1 Q And then you were also asked some questions about a young
2 lady. There was a name Lakeisha McCoy. There was also a
3 nickname that you gave, Ms. Parsons. Could you give it to us
4 again?

5 A Kiki.

6 Q Kiki?

7 A Yes.

8 Q And you do not know whether or not Kiki and your son had any
9 kind of relationship in 2002 or were seeing each other, is that
10 right?

11 A Yes. They were seeing each other.

12 Q Do you remember seeing Kiki, Lakeisha McCoy, around your
13 house on March 24th or 25th of 2002? On that date specifically.

14 A I don't recall. I don't know. Plus, like I work at night.

15 Q So you wouldn't have any way of knowing, is that fair to
16 say?

17 A Yes.

18 Q Your Honor, I believe that's all I have.

19 CROSS EXAMINATION

20 BY MR. MARTIN:

21 Q Good afternoon, Ms. Parsons.

22 A Good afternoon.

23 Q Ms. Parsons, you identified Mr. Shelton Harris in the blue
24 shirt there?

25 A Yes.

1 Q You never saw him on the street, though, did you?

2 A No.

3 Q You saw him, you identified him because you were here in
4 court the day opening statements were made, isn't that right?

5 A Correct.

6 Q And that's the only way you know him?

7 A Yes.

8 Q You don't know him through your son, do you?

9 A No.

10 Q Thank you.

11 CROSS EXAMINATION

12 BY MR. COBURN:

13 Q Ms. Parsons, good afternoon.

14 A Good afternoon.

15 Q I'm one of the lawyers representing Shawn Gardner.

16 A Yes.

17 Q Just a few questions, okay?

18 A Yes.

19 Q Now, you know Shawn Gardner as Goo, right?

20 A Yes.

21 Q How did you first get to know him? How did you come to know
22 Mr. Gardner or Goo?

23 A About a year after I moved to Baltimore, I was working at
24 the store called Sanitary Market. And he used to come in there
25 ever day before he getting ready to go to school.

1 Q I'm sorry. Go ahead.

2 A That's how I got to know him. I knew him from there.

3 Q And about how old was Goo or Mr. Gardner when you first got
4 to know him in that way, when he started coming and going in and
5 out of the store?

6 A Elementary school.

7 Q He was in elementary school?

8 A Yes.

9 Q So this was a while ago?

10 A Yes.

11 Q Where was the store located?

12 A On Liberty Road in Randallstown.

13 Q What kind of a store was it?

14 A It was a small market, market store.

15 Q Did you and Mr. Gardner become friends?

16 A Yes.

17 Q How did it happen that you became his Godmother?

18 A Because he came, and when he was coming around the store,
19 and I just told him I was going to be his Godmother.

20 Q And about when was that?

21 A It was about, I don't know exactly right after I met him, I
22 don't know how long it was after I met him. I don't know.

23 Q Well, at the point you told him that you were going to
24 become his Godmother, did you feel like you knew him pretty well?

25 A It was a while after I had met him.

1 Q Okay. How did he come to know your son, Shelly Wayne
2 Martin? Did he know him in some other way or was that through
3 you?

4 A I don't know. I don't know how they got to know each other.

5 Q Did he know you longer or did he know your son longer, if
6 you know that?

7 A I think he knew me before he knew my son.

8 Q Do you know about how long he knew you from before he kept,
9 got to know your son?

10 A No.

11 Q Okay. You mentioned, in response to one of the questions
12 Mr. Hanlon was asking you, I think it was while you were looking
13 at this, while you were looking at this phone book at one point.
14 Do you remember when Mr. Hanlon, the gentleman over there, was
15 asking you questions about this phone book?

16 A Yes.

17 Q And whose phone book is this, Ms. Parsons?

18 A It look like mine, they took out of my house.

19 Q So it's your phone book, not Shelly Wayne Martin's phone
20 book?

21 A No, it's mine. It was the same one they took from my house.

22 Q So all those phone numbers you had in there for Goo, those
23 are numbers that you wrote in your phone book?

24 A Yes.

25 Q Now, when you were involved with these pieces of paper, you

1 know, the legal mail, the envelopes that were addressed to Mr.
2 Harding, did you know what that was about?

3 A No, I had no idea.

4 Q You mentioned at one point that you knew that Goo's
5 daughter, Goo had a daughter who'd been born?

6 A Yes.

7 Q Do you remember when that was?

8 A That was when I was living on Sunmar Court. It was before
9 2002. But I don't know what date or not.

10 Q Before 2002?

11 A Yes.

12 Q Do you remember her name? That's okay.

13 A No.

14 Q No problem. Finally, do you remember testifying when Mr.
15 Crowe, the gentleman over there, was asking you questions about
16 Harold Glaser?

17 A Yes.

18 Q And you told Mr. Crowe that Mr. Glaser was representing your
19 son, Shelly Wayne Martin, in his, with respect to his legal
20 problems back in the year 2002. Is that correct?

21 A Yes.

22 Q Who found Mr. Glaser? Was that you or your son who found
23 him?

24 A My son.

25 Q Okay. And then you told us about a payment arrangement that

1 you had with Mr. Glaser, right?

2 A Yes.

3 Q And did you tell the ladies and gentlemen of the jury that
4 this was sort of an installment payment plan that you had?

5 A Yes.

6 Q So you were supposed to be making payments over time, is
7 that right?

8 A Yes.

9 Q And during that time that you were making payments, it was
10 your understanding that Mr. Glaser was already representing your
11 son, right?

12 A Yes.

13 Q So while Mr. Glaser was your lawyer, you were making
14 payments which, in the end, before the trial, was supposed to
15 total \$10,000, right?

16 A Yes.

17 Q And you were making those payments, right?

18 A Yes.

19 Q Even though it was hard, you made them, right?

20 A Yes.

21 Q Now, did your son ever express any dissatisfaction with Mr.
22 Glaser to you? Did he say, I don't want Mr. Glaser as my lawyer?

23 A I don't recall. I don't know.

24 Q You don't recall him doing that?

25 A No. I don't know.

1 Q Okay. So far as you knew, while you were making these
2 payments, Mr. Glaser was functioning as your son's lawyer, right?

3 A Yes.

4 Q And he's a private lawyer, right? Obviously, since you were
5 paying him? Excuse me. The Court wasn't paying him. You were,
6 right?

7 A Yes.

8 Q Thank you. Nothing further.

9 REDIRECT EXAMINATION

10 BY MR. CROWE:

11 Q Mr. Hanlon showed you a phone bill which he said was seized
12 from Two Cree Court for a telephone number in your son's name
13 where your son's address was listed as Sunmar Court. Do you
14 recall that?

15 A Yes.

16 Q And Sunmar Court is where you lived before you moved to Two
17 Cree Court, is that correct?

18 A Correct.

19 Q Was there a period of time when your son was in a halfway
20 house before he came home to live permanently?

21 A Yes.

22 Q And while he was in the halfway house, were there times when
23 he would get furloughs and he would be able to spend some time at
24 home or an occasional night at home?

25 A Yes.

1 Q Okay. And your recollection was that he first came to
2 Sunmar Court and then later to Cree Court, is that correct?

3 A Correct.

4 Q And is it also your recollection that he was finally
5 released from the halfway house sometime in March of 2002?

6 A Before I moved to Cree Court he had, he was living with
7 Sunmar Court when we moved to Cree Court. He was with me then.

8 Q Okay. But do you recall when he was released finally from
9 the halfway house, that is when he was able to spend every night
10 at home? If you don't, that's fine.

11 A I don't.

12 Q That's okay. It's been a long time ago.

13 You were asked by Mr. Coburn if you understood the
14 various papers that the son, that you signed on behalf of your
15 son or Mr. Gardner. Did you even, did you try to read any of
16 them?

17 A I tried to read them. Still didn't understand them.

18 Q Did they make any sense to you?

19 A No.

20 Q Okay. Thank you very much.

21 RE CROSS EXAMINATION

22 BY MR. HANLON:

23 Q One question, Your Honor. Ms. Parsons, if you remember, you
24 were asked by me and by Mr. Crowe and I think by Mr. Coburn about
25 Harold Glaser representing your son. Do you know when Mr. Glaser

1 actually entered his appearance in your son's case? That is,
2 when he actually began, when he notified the Court that he was
3 going to be your son's attorney? Do you know when that happened?

4 A No. I don't remember. No.

5 Q Just a moment, Your Honor. Thank you, Your Honor. Thank
6 you, ma'am.

7 THE COURT: Ms. Parsons, thank you very much. You're
8 excused.

9 THE WITNESS: Okay. Thank you.

10 MS. RHODES: We have another witness ready but I need
11 to mark some exhibits and do a couple things before we call him.
12 Is it possible to take the lunch break at this time?

13 THE COURT: Well, I was hoping to do a few more before
14 the lunch break. I think Mr. Coburn and Mr. Kurland --

15 MR. COBURN: I think we're ready.

16 THE COURT: Will it take more than ten minutes or so?

17 MR. KURLAND: Probably, Your Honor.

18 THE COURT: More than 15?

19 MR. KURLAND: 15 is probably what it would take. But
20 there's one brief matter, a sidebar.

21 THE COURT: Let's give it a try. What's the witness'
22 name again? Refresh me.

23 MR. COBURN: Jamane Johnson, Your Honor.

24 THE COURT: Ladies and gentlemen, Mr. Coburn -- you
25 want to confer with counsel?

1 MR. KURLAND: Well, I need to confer with Mr. Harding.
2 This has sort of changed the timing and Mr. Harding may have a
3 reason to want to do this --

4 THE COURT: Go ahead and chat.

5 (Pause in Proceedings.)

6 MR. CROWE: Your Honor, may I return the exhibits to
7 Ms. Arrington?

8 THE COURT: Please.

9 MR. KURLAND: Could we have a sidebar, myself and Mr.
10 Harding?

11 THE COURT: You can't work it out between yourselves?

12 MR. KURLAND: No.

13 THE COURT: I would rather you do it yourself. You
14 don't need me.

15 MR. KURLAND: It's a matter of, because of trying to
16 switch around orders, I told Mr. Harding earlier that I expected
17 that he'd be able to look at the transcript over the lunch break.
18 He hasn't had an opportunity to do that. We're trying it
19 accommodate the Court's schedule. And that's why --

20 THE COURT: Okay. All right. All right. Members of
21 the jury, we'll break now for lunch.

22 What we are trying to put in place, there is a witness
23 who has testified in a previous proceeding, who the parties here
24 have agreed you may consider that witness' prior testimony for
25 purposes of these proceedings. And I think what Mr. Kurland and

1 Mr. Coburn plan to do is that one of them will take the role of
2 the attorney who was asking the questions and the other one, or
3 somebody else, will take the role of the witness.

4 So the question will be read and then the witness'
5 answer will be read. And you will be able to treat that
6 testimony as if the witness were actually here testifying.

7 The witness is the individual, I think, who's been
8 referred to in these proceedings as Momma or Jamane Johnson.

9 So we apparently have a few additional items to clarify
10 with respect to that procedure. So I'm going to excuse you for
11 luncheon recess at this time. Please leave your note pads on
12 your chairs. Have no discussion about any of the evidence you've
13 heard so far or any aspect of the case. Continue to keep an open
14 mind about all issues. The jury's excused until 2 p.m.

15 (Jury exits the courtroom.)

16 THE COURT: What's up?

17 MR. KURLAND: No. That was just, the Court's little
18 preamble was almost exactly what I would have proposed. Just
19 explaining to the jury what's going on. One other thing is --

20 THE COURT: Well, but what's the problem?

21 MR. KURLAND: The problem is is that the final edits of
22 the transcript, Mr. Harding hasn't had a chance --

23 THE COURT: Please have a seat, everyone, for a moment.
24 I'm going to clarify.

25 MR. KURLAND: Is that there are certain procedural

1 aspects of the testimony that, that have been edited out. And
2 Mr. Harding just wanted an opportunity to look at them to make
3 sure that he agreed with the deletions.

4 THE COURT: So there's no problem?

5 MR. KURLAND: No. No.

6 THE COURT: It's just that Mr. Harding hasn't yet had a
7 chance to review the final transcript.

8 MR. KURLAND: Exactly. Exactly.

9 THE COURT: All right.

10 MR. KURLAND: That's all. There's also one exhibit
11 that will go along with the testimony that Mr. Harding, I've
12 given a copy to, that I don't anticipate there being any problem
13 with.

14 THE COURT: What is the exhibit?

15 MR. KURLAND: The exhibit is Mr. Johnson was originally
16 charged in a 10 count state indictment. He pled to Count Seven.
17 And there's an interlineation of the actual, I blotted out
18 everything except the Count Seven he pled to, the language. The
19 parties have agreed that that actually --

20 THE COURT: I'm sorry. What is the exhibit? Is it a
21 plea agreement?

22 MR. KURLAND: No. Not a plea agreement.

23 THE COURT: What is it?

24 MR. KURLAND: It's the language of the charge to which
25 he pled.

1 THE COURT: And where does it appear? What is the
2 exhibit?

3 MR. KURLAND: No. It's a blotted-out document of the
4 actual charging document that's referred to in his testimony.
5 The parties don't have a problem.

6 THE COURT: Okay. What is the exhibit? Is it an
7 indictment? Is it an information?

8 MR. KURLAND: It's a piece of paper.

9 THE COURT: What is it?

10 MR. KURLAND: An indictment. One paragraph.

11 THE COURT: So it's an indictment?

12 MR. KURLAND: Yes.

13 THE COURT: That's all I was asking. What is the
14 exhibit? It's an indictment.

15 MR. KURLAND: Well, there's one other issue.

16 Mr. Johnson has, I would say, three or four prior
17 convictions. The prior convictions are of the 609(a)(1) variety
18 that the Court is going to have to make a ruling on as to whether
19 or not they're admissible to impeach.

20 THE COURT: Wait. No. Let me explain. When counsel
21 in a case in front of me have agreed to present prior testimony,
22 what I expect is to be totally uninvolved. I expect -- which one
23 of you is going to play Johnson?

24 MR. COBURN: I will, Your Honor.

25 THE COURT: So Mr. Coburn is Momma. And how many

1 lawyers are inquiring?

2 MR. KURLAND: There's three, but I'm going to be all of
3 them because Mr. Harding doesn't want to read.

4 THE COURT: And who are the lawyers?

5 MR. KURLAND: Mr. Stocksdales, the State's Attorney, and
6 then two defense lawyers. I was going to just simply say direct
7 examination and cross examination, and not even identify it's the
8 state's attorneys.

9 THE COURT: Okay. So you'll read the questions.

10 MR. KURLAND: Yes.

11 THE COURT: Mr. Coburn will read the answers. I don't
12 expect to rule on any objections. I don't even expect there to
13 be any objections.

14 MR. KURLAND: Good.

15 THE COURT: Right?

16 MR. KURLAND: Yes.

17 THE COURT: So what were you referring to just now
18 about the 609?

19 MR. KURLAND: Oh, after that or before that --

20 THE COURT: Before what?

21 MR. KURLAND: Well, before, either before the testimony
22 or after the testimony, Mr. Johnson has several prior
23 convictions.

24 THE COURT: All right. But wait a second. Wait a
25 second. Is this not in the transcript?

1 MR. KURLAND: Two of them are. I believe one isn't.

2 THE COURT: And they were admitted?

3 MR. KURLAND: They were acknowledged during the
4 examination, yes.

5 THE COURT: Okay. So what is there for me to do except
6 sit here and listen? That's what I'm trying to get to.

7 MR. KURLAND: I believe there might well be one
8 additional prior conviction.

9 THE COURT: That was not, that was not the subject of
10 the examination?

11 MR. KURLAND: Yes.

12 THE COURT: So why, why are we going to get into that?

13 MR. HARDING: Judge, it's because I agreed to stipulate
14 to the admission of this transcript on condition that a list of
15 his prior convictions also come in.

16 THE COURT: A list?

17 MR. HARDING: A list.

18 THE COURT: Are you talking about a separate exhibit?

19 MR. HARDING: Yes. A separate exhibit, like his rap
20 sheet. Or a list. It can be a list.

21 THE COURT: I guess nothing in this trial is easy.
22 Absolutely nothing.

23 MR. HARDING: It's important, Your Honor, because --

24 THE COURT: Look, that's fine. I just want to know how
25 we're going to do it. Is there not some way -- I don't think we

1 should change the transcript to include it. What's the missing
2 conviction, the one that he didn't acknowledge in the transcript?

3 MR. HARDING: Well, there's one conviction since the
4 transcript in time. There's one from 2006. If he were --

5 THE COURT: Is that the one that's not mentioned?

6 MR. KURLAND: I believe so, Your Honor.

7 THE COURT: Okay. So the way we would do it is at the
8 end of the reading I would turn to the jury and say something
9 like, or you, Mr. Harding, would get up and say to the jury, I
10 guess I should do it, in addition to the two convictions that Mr.
11 Johnson acknowledged on the transcript, the parties have agreed
12 that Mr. Johnson has an additional conviction; namely, a
13 conviction for?

14 MR. HARDING: Let me just clarify. I don't necessarily
15 agree that there's only one.

16 THE COURT: But we're only going to do one, is that
17 right?

18 MR. HARDING: There are only two mentioned in the
19 transcript. There may only be one. I don't remember. In any
20 case, there are a total of five prior convictions, one of which
21 is the robbery that he pled guilty to. So that's clearly
22 mentioned. So there are four narcotics convictions. I just want
23 to get in a list of those narcotics convictions and the dates of
24 the arrest.

25 THE COURT: The dates of the arrest or the dates of the

1 convictions?

2 MR. HARDING: I don't have the dates of the conviction.

3 THE COURT: Why are you entitled to get in the dates
4 somebody was arrested? What's the relevance of that?

5 MR. HARDING: Well, if it's better, I'll just get in
6 the year of the arrest or something like that.

7 THE COURT: Or the year of the conviction. It's
8 supposed to be impeachment by conviction of a crime. You
9 yourself, Mr. Harding, have objected to testimony about arrests
10 of some people.

11 MR. HARDING: No. But these are convictions.

12 THE COURT: Right. That's why I'm saying, let's forget
13 about dates of arrest. Let's talk about the date of the
14 conviction.

15 MR. HARDING: Well, I may be able to get that over
16 lunch. I have to talk to my agents.

17 THE COURT: So here's what I'm going to expect you to
18 do over lunch. Finalize the transcript. Give me a copy so I can
19 follow along. I assume all of counsel have copies. And agree on
20 how we're going to add in the one or two additional convictions
21 for impeachment purposes, which I will be happy to recite to the
22 jury after Mr., after Mr. Kurland and Mr. Coburn finish with
23 their demonstration. Okay? But there won't be any objections
24 read in the transcript, correct?

25 MR. KURLAND: Well, there might be one that's overruled

1 for the flow. But I've tried to delete all those.

2 THE COURT: Delete all of the objections. Please.

3 MR. KURLAND: All right.

4 THE COURT: Do not read, because then, you know, you're
5 going to be reading, you're going to be reading for the judge,
6 too. And that goes too far.

7 MR. KURLAND: All right. There's one court line I'll
8 take out. Your Honor, the problem is these drug convictions,
9 particularly the stuff that happened after the testimony, are
10 609(a)(1) convictions, which it's up to the judge to rule under
11 403 whether they're admissible to impeach or not.

12 THE COURT: All right. They're admissible.

13 MR. KURLAND: All right.

14 THE COURT: Anything else? Look, I really don't want
15 to stumble over there, Mr. Kurland. Please, please, have it in
16 place. You going to be ready to go immediately after lunch or do
17 you want Ms. Rhodes to go first?

18 MR. KURLAND: As long as I can get a couple copies
19 made. Yes. Yes. Yes. Yes.

20 MR. COBURN: Do you want me to sit up there when I do
21 it, Your Honor?

22 THE COURT: Yes. I want you to sit on the witness
23 stand.

24 MR. KURLAND: We will be ready to go.

25 THE COURT: Okay. Ms. Rhodes, you have two telephone

1 people?

2 MS. RHODES: Yes, Your Honor.

3 THE COURT: And that third person? Oh, the third
4 person was the coach --

5 MS. RHODES: Has vanished, yes.

6 THE COURT: And then, Mr. Crowe, do you have another?

7 MR. CROWE: We don't, Your Honor. But I have one thing
8 I would like to ask the Court.

9 THE COURT: What is that?

10 MR. CROWE: We have postponed an initial appearance on
11 a violation of supervised release before Magistrate Bredar. In
12 the event this leaks over a little past two, may we be excused?

13 THE COURT: Of course. Of course. Mr. Martin, you and
14 Mr. Flannery?

15 MR. MARTIN: We have some documents that are certified
16 that we're going to put in. There's an agreement with Mr.
17 Harding on one of them.

18 THE COURT: So you can do that when we need to fill
19 some time.

20 MR. MARTIN: When we have the time.

21 THE COURT: And finally, Mr. Coburn, Mr. Kurland?

22 MR. COBURN: I think --

23 THE COURT: You can stay there. You can stay there,
24 Mr. Coburn. Apart from the transcript, what else do you have?

25 MR. COBURN: Darryl Bacon. I don't know whether he's

1 here or has been picked up or anything like that. And then we
2 have Tyesha Collins.

3 THE COURT: All right. I've decided, Ms. Arrington
4 left a message for -- what's the mother's name again?

5 MR. COBURN: Sarah Allen, Your Honor.

6 THE COURT: Ms. Allen. And I have decided that it's
7 inappropriate for the Court to issue an arrest warrant for a
8 minor to a six-year-old murder on the basis, and in fact, I
9 couldn't issue the arrest warrant for the minor. I would have to
10 issue it for her mother because it's the mother who's responsible
11 for getting her here. And based on your proffer this morning,
12 that the only point of her testimony, if she's called at all, is
13 to have her describe to the jury in contrast to other witnesses
14 that one of the perpetrators walked or ran away from the scene
15 before the shot was fired, whereas earlier testimony has both
16 perpetrators standing there and leaving together.

17 Now, whether this young person saw Mr. Montgomery, who
18 claims that he was close to the scene and turned and walked away,
19 or whether, in fact, this person saw one of the perpetrators
20 actually walk away before the shot was fired I don't think is
21 material and I think it would be an abuse of the Court's
22 authority to issue an arrest warrant for a mother who I guess the
23 marshals would have to go there and say, We have an arrest
24 warrant for you, Ms. Allen, but what the judge really wants is
25 for you to bring your daughter to court. I'm not going there.

1 So I'm accepting your proffer. Your objection is
2 noted. And I do note that you indicated, and I appreciate the
3 candor, that you weren't even sure you were going to call this
4 witness. What you were mainly interested in, at least as an
5 initial matter, was talking to her to see what she might say.
6 Because you haven't talked to her yet, correct?

7 MR. COBURN: I have, I have talked to her.

8 THE COURT: So that was the basis of your proffer?

9 MR. COBURN: It was.

10 THE COURT: Together with the statement you got from
11 the government?

12 MR. COBURN: Yeah. The proffer's actually a little
13 more expansive than the statement itself.

14 THE COURT: All right. Well, that's the Court's
15 ruling. I'm not issuing a warrant for her, Ms. Allen. Yes, Ms.
16 Rhodes.

17 MS. RHODES: Just to clarify, Your Honor. We do have a
18 couple other things this afternoon we can do, some exhibits, some
19 documents.

20 THE COURT: Okay.

21 MS. RHODES: That sort of thing. Maybe another 20
22 minutes or so beyond the two witnesses.

23 THE COURT: Okay. Thank you. We're in recess until
24 2:00.

25 (Luncheon Recess at 12:45 p.m.)

1 MR. HARDING: Your Honor, I'm handing up a list of the
2 Jamane Johnson narcotics convictions and supporting
3 documentation.

4 THE COURT: All right. Thank you, Mr. Harding.

5 MR. HARDING: I showed to Mr. Kurland.

6 THE COURT: I'm sorry?

7 MR. HARDING: I showed to it Mr. Kurland.

8 THE COURT: Mr. Martin?

9 MR. MARTIN: Yes, Your Honor. Remember we had the
10 discussion the other day about Mark Herbert, TM, the witness who
11 had been here, Mr. Harding informed us that he'd been here in the
12 courtroom?

13 THE COURT: Yes.

14 MR. MARTIN: So he's here, Your Honor. We've talked to
15 him. And you may want to interrogate him before he goes on the
16 stand, if you're even going to decide whether you're going to let
17 him on the stand.

18 I would proffer to the Court that he would testify he
19 wasn't here for opening statements. He was here for a couple of
20 days and saw some of the drug witnesses, the police come in. He
21 may have seen Mr. Bacon testify. But he was not here for Mr.
22 Hayes's testimony, which is the subject that we would have him
23 here on.

24 THE COURT: Okay.

25 MR. MARTIN: And he didn't see any of that and doesn't

1 know about any of that.

2 THE COURT: All right. Mr. Harding?

3 MR. HARDING: Well, the agents disagree on how many
4 days he was here. They have a larger figure, several weeks, in
5 fact, I believe, was their estimate. And in any event, his
6 sister, Ayesha, with whom he was living back at the relevant time
7 period, has been here even more often and was here during Rodney
8 Hayes's testimony.

9 So we think there's a very clear violation of the
10 sequestration order here. And it results from the defendant's
11 own conduct in this case.

12 THE COURT: Here's the way I'm going to cure it, Mr.
13 Harding. Mr. Martin can call the witness. But before Mr. Martin
14 or any other defense counsel makes inquiry, I will permit you to
15 effectively impeach the witness in advance by showing,
16 questioning him as to his presence in the courtroom, ask him
17 whether he was aware of the rule on witnesses, and to find out
18 with whom he has spoken.

19 In other words, I'll let you do that first. And then
20 after you have gone through that, then we'll hand the witness to
21 the defense. And then, of course, you will have an opportunity
22 for further cross examination.

23 MR. HARDING: Okay. Well, he, of course, was never
24 subpoenaed to testify so he didn't violate the court order on
25 sequestration.

1 THE COURT: Well, I appreciate that. But any witness
2 is bound by the rule. I'm not suggesting that he should have
3 known about it. I'm just suggesting the kinds of interrogation
4 you're free to conduct.

5 MR. HARDING: Okay, Your Honor.

6 THE COURT: You could even ask him when he found out he
7 was going to be called as a witness. I mean, so I'll leave it to
8 you as to how you wish to approach that. Mr. Martin, if you're
9 objecting, I'll note your objection.

10 MR. MARTIN: Yes, Your Honor. I think the appropriate
11 way to do it would be either to do it outside the presence of the
12 jury or let Mr. Harding do it on his cross and not to let him
13 start that way. But whatever you're going to do. I'm not
14 actually calling him.

15 THE COURT: I'm sorry?

16 MR. MARTIN: He just wanted me to get up here and take
17 the heat, Your Honor.

18 THE COURT: I should have known.

19 MR. MARTIN: That's why I'm up here.

20 THE COURT: I should have known. All right.

21 MR. LAWLOR: I never get any favorable rulings. Mr.
22 Martin's --

23 THE COURT: Which category does this one fall into, Mr.
24 Lawlor?

25 MR. LAWLOR: So far, so good.

1 THE COURT: All right. Mr. Coburn?

2 MR. COBURN: Hi, Your Honor. I wanted to inquire
3 through the Court --

4 THE COURT: Excuse me, Mr. Coburn.

5 By the way, Mr. Harding, I'm sorry to distract you.
6 Assuming you accept the Court's cure --

7 MR. HARDING: Well --

8 THE COURT: Or do you want just to forego all that and
9 wait until your cross to bring all that out? It's up to you.
10 And you don't have to decide now, frankly. If you want to think
11 about it, chat about it with the agents and/or Mr. Hanlon. When
12 Mr. Lawlor calls him, I'll just look to you. And if you stand
13 up, you'll go first. And I'll instruct the jury that this is a
14 witness who admittedly was in the courtroom during an earlier
15 phase of the trial. And therefore, I'm permitting you to inquire
16 of the witness before he's tendered to the defense for regular
17 questioning.

18 MR. HARDING: Is he represented by counsel, may I ask?

19 MR. LAWLOR: He is, Your Honor. And he is, according
20 to what he told us, he's been advised by his counsel about his
21 testimony here.

22 THE COURT: That it's okay for him to testify?

23 MR. LAWLOR: I don't know what, I just know he talked
24 to his lawyer. I told him to talk to his lawyer. He told me the
25 name of his lawyer. I said I could not and would not advise him

1 about the propriety of testifying.

2 THE COURT: And he has not been served with a subpoena.

3 MR. LAWLOR: He has not been served with a subpoena.

4 THE COURT: So he's here as a volunteer. So that
5 satisfies me.

6 MR. HARDING: Okay. I will, I will take advantage of
7 the Court's offer to question the witness first of all. I'm a
8 little worried about the fact that he apparently is minimizing
9 how often he's been here, if my agents --

10 MR. MARTIN: Your Honor, I may have been minimizing it.
11 I'm not saying he did. I didn't ask him how many days he was
12 here. I asked him what he saw.

13 THE COURT: All right.

14 MR. MARTIN: I didn't calculate days when I did it.

15 THE COURT: All right. It may be that I'm going to
16 recognize him and I may have a better idea than anybody else as
17 to how often he's been here. But we'll just see how it goes. Go
18 ahead, Mr. Coburn.

19 MR. COBURN: Thank you so much, Your Honor. I just
20 wanted to inquire, I guess I'm assuming, I wanted to inquire
21 through Your Honor since we haven't heard anything, I'm assuming
22 Darryl Bacon has not appeared?

23 MR. HANLON: No, Your Honor.

24 THE COURT: I haven't authorized the warrant. What's
25 your report, Mr. Harding? What's the best?

1 MR. HARDING: No report. No information. He didn't
2 show.

3 MR. COBURN: I do request a warrant, Your Honor. It
4 doesn't have the same sort of sensitivity as, of course, the
5 other situation.

6 THE COURT: And Mr. Kurland's going to be prepared to
7 go forward with him if he's brought in tomorrow morning?

8 MR. KURLAND: Yes.

9 MR. COBURN: Yes.

10 THE COURT: All right. Mr. Harding, do the agents at
11 least have a cell phone for him? Are they able to make
12 telephonic contact?

13 MR. HARDING: They do, yes.

14 THE COURT: All right. I would ask the agents --

15 MR. HARDING: He's not been answering his phone,
16 obviously.

17 THE COURT: All right. I would ask the agent to simply
18 leave a voice mail for Mr. Bacon, specifically advising him, one,
19 that the call is at the direction of the Court; number two, that
20 the Court advised had him that he was subject to recall; and
21 number three, that if he doesn't appear by 3:30 this afternoon,
22 the Court will issue an arrest warrant for him.

23 MR. HARDING: 3:30 this afternoon?

24 THE COURT: 3:30 this afternoon is his deadline.

25 MR. HARDING: Okay. Just a bit of background here,

1 Your Honor. I'm sure Your Honor recalls that he was specifically
2 named on the Stop Snitching video and is consequently terrified
3 of appearing in this courtroom.

4 THE COURT: I fully understand that. What I am hoping
5 is that he will call the agent back, arrange to meet the agent
6 some place, and get an escort back here this afternoon or
7 tomorrow morning. Do his bit, and then he's, he's out of here.
8 I certainly, you know --

9 MR. HARDING: The Court has ruled that the letter's not
10 coming in. And Mr. Coburn, I thought, made it clear that they
11 didn't have anything to do with Mr. Bacon other than the letters.

12 THE COURT: No. It was just the opposite. Now, Mr.
13 Coburn was obviously making good faith representations. But he's
14 entitled to have the Court proceed on his representation that
15 he's going to elicit some affirmative evidence.

16 MR. KURLAND: Well, Judge, before 3:30 -- I'm sorry.

17 THE COURT: I'm finished with Mr. Bacon.

18 MR. COBURN: Thank you, Your Honor.

19 THE COURT: All right. Do you want to take the stand,
20 Mr. Coburn?

21 MR. COBURN: Yes, Your Honor.

22 MR. MARTIN: Can I cross examine, Your Honor?

23 THE COURT: You may.

24 MR. COBURN: That's a scary prospect.

25 THE COURT: So Mr. Kurland, Mr. Harding has handed me a

1 list of five convictions. April, '98, April, '98, May, '99,
2 October, '99, and February, '06. Can you tell me quickly which
3 two are mentioned in the transcript?

4 MR. KURLAND: I'm not sure the dates. But the
5 testimony that he testified to was in September 30th, 2004. So
6 it's obviously the counts to which he pled, which is the, the
7 armed robbery.

8 THE COURT: I'm sorry. Do you know, Mr. Harding?

9 MR. HARDING: I'm sorry. I wasn't paying attention.

10 THE COURT: Look, why don't I just do it this way? At
11 the end of the examination, I'll just say, and it's stipulated by
12 the parties that Mr. Johnson has the following convictions?

13 MR. KURLAND: Yes.

14 THE COURT: Okay? So I'll just read them off.

15 MR. KURLAND: Mr. Harding's represented to me they're
16 all felonies which qualify under the rule. And the Court has
17 already ruled under the 609(a)(1) the Court's ruled them
18 admissible. So that's acceptable.

19 THE COURT: All right.

20 MR. KURLAND: When the jury comes, I'm going to call
21 Jamane Johnson.

22 THE COURT: Exactly. And I'll tell the jury that while
23 there are some witnesses whose grand, whose transcribed
24 testimony -- let me start over. I will tell the jury that they
25 will have as exhibits the prior testimony, the transcript of the

1 prior testimony of certain witnesses who will be named later.
2 This witness, though being presented in this fashion, the
3 transcript itself is not being admitted.

4 MR. KURLAND: Exactly, Your Honor. And as you said
5 before, and to treat this just like any other live witness
6 testimony.

7 THE COURT: Exactly. All right. We'll have the jury,
8 please. Is Mr. Harris okay?

9 MR. LAWLOR: Yes, Your Honor.

10 MS. RHODES: Your Honor, given the Court's decision on
11 Coach Lynch, we have sort of standing by Coach Powers from Nausau
12 Community College in New York. He can't be here until Wednesday
13 morning, though.

14 THE COURT: Could we do him next?

15 MS. RHODES: I'm sorry?

16 THE COURT: We'll do him next.

17 MS. RHODES: No, I said he can't be here until
18 Wednesday morning.

19 THE COURT: Oh, no. I'm not going to have any
20 witnesses on Wednesday morning. There's a limit. We're going to
21 finish the evidence tomorrow. If he can't get down here
22 tomorrow, I'm sorry. No. We're not going to have any evidence
23 Wednesday morning. We're going to have argument. Okay.

24 Once again, the video is available, Ms. Rhodes, to get
25 that set up. The live video. Live video.

1 (Jury enters the courtroom.)

2 THE COURT: You could get him to FedEx.

3 Good afternoon, ladies and gentlemen. Thank you for
4 your patience.

5 I advised you before we broke for lunch, this next
6 witness is actually being called by way of a transcript of his
7 testimony in a prior proceeding. Mr. Coburn will read the words
8 spoken by Mr. Jamane Johnson, known during this trial as Momma,
9 and Mr. Kurland will read all of the questions put to the witness
10 in this prior proceeding by all of the attorneys who appeared.
11 It won't be a single attorney, but Mr. Kurland will not identify
12 by name or occupation beyond attorney the individuals who were
13 doing the questioning.

14 Mr. Coburn will read the answers exactly as they appear
15 in the transcript of Mr. Johnson's prior testimony and you may
16 consider this testimony just as if Mr. Johnson were actually here
17 giving this testimony.

18 Now, I need to tell you that there will be transcripts
19 of prior testimony of at least two witnesses, and perhaps as many
20 as three, that have been or will be actually marked as exhibits
21 and available to you to review in the jury room during your
22 deliberations, just as you will be able to review most of the
23 exhibits that have been admitted in this case. However, with
24 respect to the testimony of Mr. Johnson which you are about to
25 hear, the transcript itself is not being admitted into evidence.

1 Only the testimony of Mr. Johnson as given to you now by Mr.
2 Coburn playing the role of Mr. Johnson will be available to you
3 to consider. But other than that, you may consider this
4 testimony, as I say, exactly as if it was Mr. Johnson sitting on
5 the stand rather than Mr. Coburn.

6 Mr. Kurland, you may call your next witness.

7 MR. KURLAND: Mr. Gardner calls Jamane Johnson.

8 THE COURT: Very well. And I'll remind you, gentlemen,
9 that you need to read slowly.

10 MR. COBURN: Thank you, Your Honor.

11 THE CLERK: Raise your right hand.

12 THE COURT: Let me. No. We don't need to play that.
13 There's a limit to the play acting.

14 MR. KURLAND: The witness --

15 THE COURT: And I will tell, I will tell the ladies and
16 gentlemen of the jury that at the time Mr. Johnson gave the
17 testimony you are about to hear, he was duly and appropriately
18 placed under oath in the fashion that you've come, you've become
19 accustomed to seeing. But we don't have to swear Mr. Coburn. Go
20 ahead, Mr. Kurland.

21 EXAMINATION OF JAMANE JOHNSON

22 (AS READ BY MR. KURLAND AND MR. COBURN):

23 Q Thank you, Mr. Johnson. You have a nickname?

24 A Momma.

25 Q Momma. Do you even know the defendant's nickname?

1 A No.

2 Q Did you know Tonya Spence?

3 A Yes.

4 Q How long had you known Tonya Spence prior to June the 7th,
5 2002?

6 A For more than ten years.

7 Q Did you know she was married?

8 A Yes.

9 Q Do you know her husband's name? What was that?

10 A Darius Spence.

11 Q In June of 2002, what was your relationship to her?

12 A We was good, intimate friends.

13 Q Okay. And did you -- how often did you talk to her?

14 A Every day.

15 Q On June the 7th, 2002, shortly after 4:30, did you have
16 occasion to speak to Tonya?

17 A Yeah.

18 Q Okay. And how did you do that? Physically how was that
19 accomplished?

20 A On the phone.

21 Q And what type of phone were you using?

22 A A cell phone.

23 Q Okay. And first of all, do you recognize the number
24 443-375-2168?

25 A Yes. That was Tonya's number.

1 Q That was Tonya's phone. And who was Lisa Young?

2 A My mother.

3 Q Okay. And do you recognize the number 443-324-1107?

4 A Yes. That was my phone.

5 Q And who did, who used that phone?

6 A Me.

7 Q Did anyone else other than you use that phone?

8 A No.

9 Q Were you charged in this case?

10 A Yes.

11 Q And did you eventually plead guilty?

12 A Yes.

13 Q What did you plead guilty to?

14 A Conspiracy to robbery.

15 THE COURT: Excuse me one moment.

16 A JUROR: Could you slow down a bit?

17 THE COURT: Slow down, please, gentlemen.

18 MR. COBURN: Absolutely.

19 THE COURT: Thank you.

20 Q I'll go down to 33 and a third.

21 What did you plead guilty to?

22 A Conspiracy to robbery.

23 Q And who was it that you pled guilty conspiracy to rob of?

24 A Darius Spence.

25 Q And what was the sentence that you received?

1 A A 15 year suspended sentence.

2 Q Do you know an individual by the name of William Montgomery?

3 A Yes.

4 Q Prior to Tonya's death, did you, could you describe how you
5 knew Mr. Montgomery?

6 A How did I know him?

7 Q Yeah. How'd you know him?

8 A Just from around.

9 Q Okay. From the neighborhood?

10 A Right.

11 Q All right. Prior to Tonya's death, did you have an
12 opportunity or occasion to speak with William Montgomery?

13 A Yes.

14 Q And where is it, if you recall, where is it that you spoke
15 with him?

16 A On Mosher Street.

17 Q Mosher Street. And when you spoke with him, what did he say
18 to you?

19 A He told me he's got, he had talked to Darius not long ago
20 about -- Darius take -- Darius wanted him to do something for
21 him.

22 Q Okay. What did Darius want, wanted him to do that he told
23 you?

24 A Take care of me.

25 Q All right. What did you take that to mean?

1 A Darius wanted him to kill me.

2 Q Okay. Well, you're here, right?

3 A Right.

4 Q So Darius -- so not, you were not killed by Mr. Montgomery,
5 is that right?

6 A Right.

7 Q Did he explain to you why he didn't kill you?

8 A Yes.

9 Q And what did he tell you?

10 A That Dirty told him not to do it.

11 Q And who is Dirty?

12 A Guy from around the neighborhood.

13 Q I mean, do you know his real name?

14 A Davon Watson.

15 Q Davon Watson?

16 A Right.

17 Q And how long have you known Davon Watson?

18 A For a long time, too.

19 Q For a long time?

20 A Right.

21 Q Was he a friend of yours?

22 A I wouldn't say buddy-buddy friends, but we know each
23 other --

24 Q Okay.

25 A -- on terms to speak and stuff like that.

1 Q And do you know whether or not he was a friend of Will
2 Montgomery's?

3 A Right. Yes.

4 Q Okay. He, yes, he was a friend of Will Montgomery's?

5 A He was present -- they was friends.

6 Q And did, after that conversation that you had with him, or
7 if it was during that conversation -- I'm not sure which one --
8 did Mr. Montgomery ever ask you to do something?

9 A Yes.

10 Q What did he ask you to do?

11 A Show him where Darius live at.

12 Q And why did he want to do that? Why did he want you to show
13 him where Darius lived at?

14 A So he could rob.

15 Q So he could rob him?

16 A Right.

17 Q And did he ask you to do anything for him?

18 A No.

19 Q Okay. Did he -- well, you just -- what did you do after he
20 ask you to show him where Darius lived?

21 A I show him.

22 Q After you -- how many times did you show Darius where --
23 excuse me -- showed Will Montgomery where Darius live?

24 A Once.

25 Q Once. And -- I'm sorry -- I interchanged some names. Let

1 me direct your attention to June 7th, 2002. You had indicated
2 that you, shortly after 4:30, were speaking to Tonya Spence. You
3 remember testifying to that?

4 A Right.

5 Q During that conversation, did you have an opportunity to get
6 a call from someone else?

7 A Yes.

8 Q And who was that someone else?

9 A Will.

10 Q And Will, what is Will's last name?

11 A Montgomery.

12 Q And what did Will Montgomery say to you?

13 A He asked me where Darius was at.

14 Q Okay. And what did you tell him?

15 A I didn't know.

16 Q Okay. And what -- did he ask you anything else?

17 A Yes. He asked --

18 Q What did he ask you?

19 A He asked me where my girl was at.

20 Q Okay.

21 A And I --

22 Q I'm sorry. You told him --

23 A Yeah. He asked me where my girl was at.

24 Q And did you respond?

25 A Right.

1 Q What did you say?

2 A I, well, I said why? Is there something about to go down?
3 And he said, no.

4 Q And how long was the conversation that you had with him?

5 A Couple seconds. Wasn't that long.

6 Q Wasn't long?

7 A Wasn't even a minute.

8 Q Wasn't even a minute?

9 A Then it says, witness nodding head yes.

10 Q All right. And at that point did you hang up your phone?

11 A Right. No. I clicked back over Tonya and -- I clicked back
12 over.

13 Q Okay. So you clicked back over for Tonya?

14 A Right.

15 Q All right. And did you continue speaking to her?

16 A Sure.

17 Q All right. In this case -- excuse me. Have you been
18 convicted of any crimes prior to coming into court today?

19 A Yes.

20 Q And what have you been convicted of?

21 A Possession with intent to distribute.

22 Q Okay. Are you currently on probation?

23 A Yeah.

24 Q And what are you on probation for?

25 A Conspiracy to rob.

1 Q Okay. And that was out of a charge in this courthouse?

2 A Right.

3 Q And who was the judge?

4 A Dugan.

5 Q Judge Dugan?

6 A Says witness nodding head yes.

7 Q Okay. And where are you currently being housed?

8 A DOC.

9 Q DOC?

10 A Again, witness nodding head yes.

11 Q And why are you being housed there?

12 A Because probation -- I mean, a parole violation.

13 Q A parole violation?

14 A Right.

15 Q And what was the parole violation?

16 A Possession with intent to distribute.

17 Q Okay. And have you already had your parole hearing for
18 that?

19 A Yeah.

20 Q Okay. And what sentence did you get?

21 A I, I had to finish up my time.

22 Q Okay. And how much time did you have to finish out?

23 A Five years.

24 Q Okay. Mr. Johnson, when you were arrested, you were
25 originally arrested for and charged with the murder of Dar -- of

1 Tonya Spence, isn't that right?

2 A Yes.

3 Q Okay. And then, in fact, you were able to work out an
4 agreement with the state that you would plead guilty to the
5 conspiracy to rob Darius --

6 A Yes.

7 Q -- Spence, isn't that correct?

8 A Yes.

9 Q Okay. Now, do you recall being interviewed on several
10 occasions by detectives from the Baltimore County Police
11 Department?

12 A Yes.

13 Q Okay. And do you recall being -- do you know what those
14 detectives' names are? Do you remember?

15 A Marll and Tincher.

16 Q Okay. And in fact, they're with you today, aren't they?

17 A Right.

18 Q I just want to make sure you remember who they are. And do
19 you recall them coming to, I assume, your home on or about
20 September of 2002 to interview you?

21 A Yes.

22 Q Okay. And at that time do you recall disclosing to those
23 detectives that you used to own a green Oldsmobile?

24 A Yes.

25 Q Okay. And in fact, you did own a green Oldsmobile, didn't

1 you?

2 A Yes. Yeah.

3 Q And you no longer own that Oldsmobile --

4 A No.

5 Q -- is that correct? Okay. And then is it fair to say that
6 you did own that Oldsmobile in June of 2002?

7 A Right.

8 Q Right. And during that interview -- I'm sorry. Do you
9 remember that once again the detectives interviewed you on 12/11,
10 which was the date that you were arrested?

11 A Right.

12 Q Okay. And do you recall, and do you recall that you did not
13 show -- and do you recall that you did not show Mr. Montgomery
14 where Ms. Spence lived?

15 A I don't believe, I don't think I was asked that.

16 Q Okay.

17 A I, I don't remember.

18 Q Well, okay. Well, do you recall saying that you thought
19 they lived on Sequoia Avenue near Wabash?

20 A Right. Right.

21 Q You do remember saying that?

22 A Says, witness noting head yes.

23 Q So then it is, in fact, a correct statement that you did not
24 tell Mr. Montgomery, that you did not tell the detectives, and
25 that you told Mr. Montgomery or showed Mr. Montgomery where Mr.

1 and Mrs. Spence lived?

2 MR. COBURN: The question is that you did not tell the
3 detectives that you told Mr. Montgomery or showed Mr. Montgomery
4 where Mr. And Mrs. Spence lived? And the answer is, you say I
5 didn't talk?

6 Q Is it fair to say, now that you remember --

7 A Right.

8 Q -- you said that he lived on Sequoia Avenue?

9 A Right.

10 Q -- that you did not, you did tell the detectives that they
11 lived -- you thought they lived on Sequoia Avenue?

12 A Right.

13 Q Okay. And do you remember -- also recall, and is it fair to
14 say that you told those detectives you never showed Will where
15 Mrs. Spence and Darius lived?

16 A Did I say that?

17 Q Mm-hmm.

18 A I don't know. I might.

19 Q You might have said that?

20 A I might. I, I mean, I don't know.

21 Q Okay. Now, you described your relationship with Mrs. Spence
22 as an intimate one. Is it fair to say, Mr. Johnson, that you and
23 Ms. Spence were having an affair?

24 A Yes.

25 Q And is it fair to say that -- strike that. Is it fair to

1 say that that affair had been going on for some time?

2 A Yes.

3 Q And is it also fair to say that Mr. Spence, shortly before
4 the murder, learned about the, that she was having an affair?

5 A Yes.

6 Q Okay. Not necessarily with you, but that she was having an
7 affair?

8 A Right.

9 Q All right. And at the time you received the alleged call
10 from Mr. Montgomery, where were you?

11 A On Monroe Street.

12 Q On Mosher Street?

13 A Monroe.

14 Q Oh, Monroe. Is it Monroe Street? And you were in a home or
15 out on the street?

16 A Out on the street.

17 Q And you were out on the street with some friends?

18 A I'm not, I'm not quite sure she was out there, but, so --

19 Q Okay. Well, is it fair to say that you thought you were by
20 yourself when you were out on the street and received the call?

21 A I don't know. Probably people was outside.

22 Q Okay.

23 A I wasn't out there by myself. I know other people was
24 outside.

25 Q Were you having a conversation with those people or was it

1 just that people were outside and you received a phone call?

2 A People was outside.

3 Q And you received a phone call?

4 A Right.

5 Q Okay. So you weren't at a, like, party or a gathering?

6 A No.

7 Q There was just people outside?

8 A Right.

9 Q And you -- okay. Then is it fair to say, then, that there
10 isn't anybody, there wasn't anybody with you that could verify
11 that Mr. Montgomery called you?

12 A No.

13 Q It's just your word, isn't that correct?

14 A Right.

15 Q Okay. And is it fair to say, Mr. Johnson, that one of the
16 businesses that you're in is the business of dealing narcotics?

17 A No, I'm not in that business.

18 Q You're not in that business?

19 A The transcript says mm-mm or um-um. I think that's a
20 negative.

21 Q Okay. Did I understand you correctly when you said that you
22 had been convicted of possession with intent to distribute?

23 A Right.

24 Q And that would be narcotics?

25 A Right.

1 Q Okay. But despite that conviction, you deny that you're in
2 any type of business of dealing drugs?

3 A Right.

4 Q Okay. Okay. Is it fair, also, to say, Mr. Johnson, that
5 when you were interviewed by the detectives concerning your car,
6 you originally told them that you drive a gold-colored Cadillac?

7 A I had one of them, too.

8 Q Okay. And is it fair to say that you didn't volunteer the
9 information that you drove a green Oldsmobile?

10 A Right.

11 Q Is it fair to say that on direct examination you testified
12 that you're the only one that uses your cell phone?

13 A Right.

14 Q Okay. Then is it fair to say that during the time that
15 you've had that cell phone, you have never allowed anyone else to
16 make a phone call or that -- on that cell phone?

17 A Well, I'm sure I did.

18 Q Oh, okay. You're sure that no one else has ever used your
19 cell phone?

20 A Right. Of course.

21 Q Is it fair to say that other people have used your cell
22 phone?

23 A Right.

24 Q Mr. Johnson, in the case that you pleaded guilty to
25 conspiracy to rob Darius Spence, you were also charged with

1 murder, is that right?

2 A Conspiracy.

3 Q Okay. I want to show you a photocopy of an indictment and
4 see -- did you ever look at the indictment charging you?

5 A No.

6 Q Why don't you take a look at that and see if that refreshes
7 your recollection with what you were charged with? Feel free to
8 pick out to him whatever you want to. The first count?

9 A It says um-hum.

10 Q You see where it says Jamane Antwon Johnson?

11 A It says, witness nodding head yes.

12 Q Aforesaid, feloniously, willfully and deliberately,
13 premeditated malice aforethought, did kill and murder one Tonya
14 Ann Jones Spence? That was what you were charged with, right?

15 A Okay. Conspiracy to murder.

16 Q I think you had testified on direct you don't know Aaron
17 Holly?

18 A It says witness nodding head yes.

19 Q And Shawn Gardner, is that correct?

20 A Right.

21 Q Whatever you did conspiracy-wise was actually with Will
22 Montgomery, isn't that right?

23 A Right.

24 Q Okay. Now, in this indictment you are charged with
25 conspiracy to rob with a dangerous and deadly weapon in the sixth

1 count of Tonya Ann Jones Spence and not what you pleaded guilty
2 of, is that right?

3 MR. COBURN: It says that's not what you pleaded guilty
4 of, is that right? And the answer is right.

5 Q You pleaded guilty to conspiracy to rob Darius Spence, is
6 that right?

7 A Right.

8 Q And that's the seventh count, do that I have right?

9 A I don't know. I have to read it first. And it says there's
10 a pause.

11 No, I didn't con, I didn't plead guilty to conspiracy
12 Shawn Earl Gardner and Aaron Holly.

13 Q I know he was going to get to that. But as far as you
14 understand, you pleaded guilty to conspiracy to rob Darius
15 Spence?

16 A Right.

17 Q And this is the one count on this copy of the indictment
18 that has a checkmark to it, is that right?

19 A Right.

20 Q So you actually were able to plead guilty to conspiracy to
21 commit robbery rather than to commit robbery with a dangerous and
22 deadly weapon, is that right?

23 A I guess.

24 Q Well, I mean, your charge was reduced, wasn't it?

25 A Right.

1 Q Yes. And as you pointed out, that what you pleaded guilty
2 to was conspiracy -- oh, I'm sorry. At least what it says here
3 on the seventh count, that the conspiracy that you committed was
4 to conspiracy with Shawn Earl Gardner and Aaron Dwayne Holly, is
5 that right?

6 A That's way, the way it reads right here, yeah.

7 Q Okay.

8 A I never seen it before.

9 Q Okay. So you never were actually charged with, as far as
10 this document is concerned, conspiring with Will Montgomery, is
11 that right? Is it?

12 A It don't say him, name on there.

13 Q Were you represented by a lawyer?

14 A Yes, I am.

15 Q And what is it that you understand -- I mean, you were shown
16 an indictment, form indictment?

17 A Right.

18 Q What was it, what is your understanding as the evidence
19 which led to your guilty plea on that charge?

20 A That I conspired with Will.

21 Q What did you do with Will?

22 A Show, pointed out apartment complex where I thought Darius
23 lived at.

24 Q That's right. Thank you.

25 Your Honor, that ends that. I would just like to admit

1 Gardner Defense 12, which all the parties have seen it. There's
2 no objection.

3 THE COURT: All right.

4 MR. KURLAND: Show it.

5 THE COURT: Gardner 12.

6 MR. KURLAND: How do I flip this on?

7 THE COURT: You're going to have to toggle the source.

8 MR. KURLAND: I'll just read it out.

9 THE COURT: This is the document to which Mr. Johnson
10 referred during the reading of the prior testimony, ladies and
11 gentlemen, the seventh count of a charging document. You want to
12 read it, Mr. Kurland?

13 MR. KURLAND: I just probably better to have it up
14 there for 15 seconds and I'll take it down.

15 THE COURT: All right. Thank you, Mr. Kurland. Thank
16 you, Mr. Coburn.

17 MR. COBURN: Thank you, Your Honor.

18 THE COURT: Ladies and gentlemen, it's agreed among the
19 parties that Mr. Johnson has five convictions that you may
20 consider in this case in evaluating the testimony you just heard
21 from Mr. Johnson. There is an April 15th, 1998 conviction in
22 state court for possession with intent to distribute narcotics.
23 There is an April 27th, 1998 conviction for possession with
24 intent to distribute narcotics. There is a May 5th, 1999
25 conviction for possession with intent to distribute narcotics.

1 There is an October 22nd, 1999 conviction for possession with
2 intent to distribute narcotics. And there is a February 16th,
3 2006 conviction for Mr. Johnson of possession with intent to
4 distribute narcotics.

5 As I will instruct you in greater detail, you may
6 consider prior convictions of an individual witness in evaluating
7 the credibility of the witness and in determining what weight, if
8 any, you are to give or you choose to give to the testimony of
9 that witness. Okay.

10 MR. LAWLOR: Your Honor, may I go retrieve my next
11 witness?

12 THE COURT: Mr. Lawlor.

13 MR. LAWLOR: Your Honor, thank you. Mr. Mitchell's
14 next witness will be Mark Herbert. Your Honor, I understand the
15 government has some preliminary questions.

16 THE COURT: Mr. Herbert, would you approach the witness
17 stand, please, and be sworn by the clerk?

18 MARK HERBERT, DEFENDANT MITCHELL WITNESS, SWORN

19 THE WITNESS: Yes.

20 THE COURT: You can be seated, please, Mr. Herbert.
21 Please get up as close as you can to that microphone. You can
22 move the microphone around so that it's not directly in your
23 face.

24 We need you to speak directly into the microphone,
25 please, sir. Please state your full name and spell it for the

1 record.

2 THE WITNESS: Mark Herbert. M-A-R-K. H-E-R-B-E-R-T.

3 THE COURT: Mr. Harding.

4 CROSS EXAMINATION

5 BY MR. HARDING:

6 Q Good afternoon, Mr. Herbert.

7 A Good morning.

8 Q I'm Robert Harding, an Assistant United States Attorney.

9 I've met you before, haven't you?

10 A Uh-huh.

11 Q Okay. Mr. Herbert, you've attended this trial on prior
12 days, isn't that correct?

13 A Correct.

14 Q And were you aware that the Court entered an order that no
15 one who was going to testify in this trial could sit in the
16 courtroom during the trial proceedings?

17 A You saying do I know that?

18 Q Yes.

19 A Yes, I heard. But I didn't know, at the time I didn't know.

20 Q You didn't know you were going to be called to testify, is
21 that correct?

22 A Yeah. I didn't know.

23 Q Is that because no one gave you a subpoena to come to court?

24 A I got one now. I mean, but I don't --

25 Q You got one now?

1 A I mean, they told me they subpoenaed me now but I don't
2 know.

3 Q Who told you?

4 A The lawyers.

5 Q Which lawyers?

6 A I don't -- I mean --

7 Q The lawyers for whom?

8 A They told me they subpoenaed. They told me I get a
9 subpoena.

10 Q They told you you'd get a subpoena?

11 A Yeah.

12 Q Well, have you gotten a subpoena?

13 A No.

14 Q So this, you didn't know you were going to be a witness in
15 this trial?

16 A No.

17 Q So you didn't know that you were violating the court order
18 by coming to court because the defense never issued you a
19 subpoena, is that correct?

20 A Right.

21 Q They never, when did they tell you that they wanted you to
22 come in and testify?

23 A Like two weeks ago.

24 Q Two weeks ago?

25 A Yeah. Something like two, three, something like that.

1 Q You came to court for more than one day, didn't you?

2 A Yeah.

3 Q You came to court on a number of days?

4 A Yeah.

5 Q Over a period of several weeks, isn't that correct?

6 A Yeah.

7 Q And is it true, too, that your sister, Ayesha, has been in
8 the courtroom very often during the course of this trial?

9 A Um-hum.

10 THE COURT: You have to say yes or no, sir.

11 A Oh, yes.

12 Q And she was here on days when you were not here, is that
13 correct?

14 A Yes.

15 Q She's been here, for example, in the last few days?

16 A Yes.

17 Q Has she not?

18 A Yes.

19 Q You talk to your sister, don't you?

20 A Occasionally, yes.

21 Q You used to live with your sister, is that correct?

22 A Yeah.

23 Q Do you still live with your sister?

24 A No.

25 Q Do you live near your sister?

1 MR. LAWLOR: Objection, Your Honor.

2 THE COURT: Overruled. You may answer.

3 A Do I live near her?

4 Q Yes.

5 A I come around her but I don't actually live near her, no.

6 Q Okay. But you see her from time to time, is that correct?

7 A Yes.

8 Q Okay. And so you're telling us that the reason why you came
9 to court all those times is because no one on the defense side of
10 this table told you they wanted you as a witness until a couple
11 of weeks ago, is that correct?

12 A Correct.

13 Q Did you continue to come to court after a couple of weeks
14 ago, when they told you you were going to be a witness?

15 A No. I wasn't here for a while before they told me.

16 Q I'm sorry?

17 A I wasn't in court a few weeks prior before they told me.

18 Q Oh --

19 A I stopped coming. I was going to work.

20 Q How many, how many weeks did you come to court?

21 A I really couldn't tell you. I don't, it was more than two.
22 I guess I say that.

23 Q More than two weeks?

24 A About two.

25 Q So you've heard the testimony of many witnesses?

1 A Polices (sic).

2 Q Polices. But also some civilians?

3 A Yeah. Some civilians, but more polices.

4 Q Okay. Your Honor, the government objects to the testimony
5 of this witness for the obvious reasons.

6 THE COURT: So noted. The jury may take into account
7 the witness' presence in the courtroom during prior proceedings
8 in this trial in evaluating the witness' testimony. But the
9 Court will permit counsel to question the witness.

10 DIRECT EXAMINATION

11 BY MR. LAWLOR:

12 Q Thank you. Mr. Herbert, before I get into the substance of
13 your testimony, let me ask you a couple quick questions. Was a
14 subpoena necessary for your attendance here or so you could get
15 the day off from work?

16 A Work.

17 Q Okay. And when is the first time that you and I ever laid
18 eyes on each other?

19 A Two weeks ago.

20 Q Two weeks?

21 A Whenever it was.

22 Q Okay. That was the first time we ever spoke?

23 A Yeah.

24 Q Okay. All right. And now getting to the substance of your
25 testimony. Do you go by a nickname?

1 A Yeah.

2 Q What's that?

3 A TM.

4 Q TM. What's that short for?

5 A Hmm?

6 Q What's that stand for, TM?

7 A Tony Montana.

8 Q Okay. And how old are you, sir?

9 A 24.

10 Q Where do you work?

11 A Hudak Demolition Company.

12 Q Okay. What do you do for them?

13 A Demolition.

14 Q Okay. How long have you had that job?

15 A About seven, eight months roughly.

16 Q Okay. Have you ever been convicted of a crime?

17 A Yes.

18 Q How many times?

19 A Twice.

20 Q Pardon me? Talking about just convictions.

21 A Twice. I would say twice.

22 Q Two times? Is that for CDS, for drugs?

23 A Yes.

24 Q Did you ever serve time?

25 A No.

1 Q Just got probation when you were convicted?

2 A Yes.

3 Q Okay. All right. Do you know a gentleman by the name of
4 Rodney Hayes?

5 A Yes.

6 Q And how do you know him?

7 A My sister brother.

8 Q Okay. He's not exactly your brother but you and he refer to
9 each other as brothers?

10 A Yes.

11 Q Okay. You have no common parents but you have a common
12 sibling?

13 A Yes.

14 Q And your common sibling is Ayesha, right?

15 A Yes.

16 Q Were you here when Mr. Hayes testified?

17 A No.

18 Q Do you know a gentleman by the name of Willie Mitchell?

19 A Yes.

20 Q Do you know, does he go by Bo?

21 A Yes.

22 Q Do you know a gentleman by the name of Shelton Harris?

23 A Yes.

24 Q Does he go by Little Roc or Roc?

25 A Whichever.

1 Q Okay.

2 A Yeah.

3 Q When did you first, first meet Mr. Harris?

4 A In probably like '99, something like that.

5 Q '99?

6 A Yes.

7 Q What was the occasion? How did you meet him?

8 A I just met him around my grandmother neighborhood.

9 Q Did you and he share a common interest?

10 A Yes.

11 Q What was that?

12 A Music.

13 Q Rap music?

14 A Yes.

15 Q Do you rap?

16 A Yes.

17 Q Okay. Did there come a time when you -- there obviously
18 came a time when you met Mr. Mitchell, right? When was that?

19 A 2001.

20 Q Okay. Now, did you and Bo and Roc rap together or work
21 together, rap?

22 A Bo don't rap. Me and Roc rap together.

23 Q Okay. Was there an entity that you all worked together at,
24 Shakedown?

25 A Yeah. That was the record.

1 MR. HARDING: Objection to leading, Your Honor.

2 THE COURT: Don't lead the witness. Go ahead, Mr.

3 Lawlor.

4 Q You all work together, is that right?

5 A Yeah.

6 Q Okay. What was the name of the label?

7 A Shakedown Entertainment.

8 Q Was it also referred to as Sheistyville?

9 A No.

10 MR. HARDING: Objection.

11 THE COURT: Overruled.

12 Q I'm sorry. What was the answer?

13 A No.

14 Q Okay. Just Shakedown?

15 A Uh-huh.

16 Q All right.

17 THE COURT: You have to say yes or no, Mr. Herbert.

18 A Oh, yes.

19 Q All right. Now, what was Mr. Mitchell's role in Shakedown?

20 A The CEO.

21 Q Okay. Did he rap?

22 A No.

23 Q Did he write lyrics?

24 A No.

25 Q And what was your role?

1 A Rapping and writing music.

2 Q And what was Roc's role?

3 A Rapping and writing music.

4 Q Were there other people that were involved in this?

5 A Yes.

6 Q And who were they?

7 A Some twins and, I mean, it was, it was basically us, me, the
8 twins, Roc, Slo, Tony.

9 Q Did people come and go?

10 A Yeah.

11 Q All right. Now, where would you, did you record some CD's?

12 A One CD.

13 Q One CD?

14 A Uh-huh.

15 Q Did, did Rock and Bo work on some other CD's?

16 A Me and Rock --

17 Q No. Did Rock and Bo work on some other CD's?

18 A Oh, yeah, a CD. This is before, before the CD I'm on. One
19 other CD.

20 Q You just worked on one?

21 A Yeah.

22 Q And what was that called?

23 A Pure Shit.

24 Q Pure Shit?

25 A Uh-huh.

1 Q Do you recall when that was recorded?

2 A 2002.

3 Q You're aware of the fact that Mr. Mitchell was arrested,
4 incarcerated?

5 A Yes.

6 Q Was Pure Shit recorded after he was incarcerated?

7 A Yes.

8 Q Where did you record that, if I didn't already ask you that?

9 A Just a random studio. It was like no home studio or
10 nothing. It was just a random studio. I guess a little
11 building, basement like.

12 Q Okay. And someone had an equipment?

13 A Yeah.

14 Q Do you know who that was that had the equipment?

15 A Can't think of his name.

16 Q All right. Did you have to pay to, for the time to use the
17 makeshift studio?

18 A Yes.

19 Q How much would that cost?

20 A 20, \$35. The price varies. Different studio, different
21 prices.

22 Q Okay. But did you say approximately 20 to \$30 an hour?

23 A Yeah.

24 Q And you made the CD, Pure Shit?

25 A Yes.

1 Q Now, was that like commercially copied? Or how did you copy
2 it once you made the original?

3 A Burnt it on, on the computer. Just took the disk and put it
4 on the computer.

5 Q You did that yourself?

6 A Yes.

7 Q And did you have like a graphic artist to make a label or
8 how did you write, how did pure, how did people know it was Pure
9 Shit?

10 A We just wrote the name on the CD's.

11 Q Did you sell them?

12 A We tried to. I mean --

13 Q Who did?

14 A Me and Rock.

15 Q And how did you try to sell them?

16 A Just random people. Ask them, tell them to record music.
17 Would they like to help a local artist out, stuff like that.

18 Q And did the CD ever get any air time?

19 A You mean like the radio?

20 Q Yeah.

21 A One, like, a song, one song.

22 Q One song got played? On what station?

23 A 88.9.

24 Q That's a local station?

25 A Uh-huh.

1 Q Okay.

2 THE COURT: You have to say yes or no, Mr. Herbert.

3 A Yes.

4 Q Okay. Now, let me ask you this. You wrote lyrics?

5 A Did I write lyrics?

6 Q Yeah.

7 A Yes.

8 Q Now, what kind of things, like can you characterize the kind
9 of music, the kind of rap you were making or the kind of lyrics
10 you were writing? What was the content?

11 A I guess I would say like gangsta rap.

12 Q Gangsta rap?

13 A Yeah. Rap music. I don't know how to classify it.

14 Q What kind of things would you rap about?

15 A Stuff that go on, I mean, regular life that go on in
16 Baltimore City. You know, regular stuff.

17 Q Where did you live at the time, by the way?

18 A In the Park Heights community.

19 Q Okay. So you said the regular stuff that went on in your
20 neighborhood?

21 A Baltimore City neighborhoods.

22 Q Baltimore City neighborhoods. Fair enough. Like what? Can
23 you be a little more specific? Like what? A lot of stuff goes
24 on in Baltimore.

25 A I mean, selling drugs. Everything.

1 Q Okay. Murders?

2 A Yeah. Murder.

3 Q Did you rap about murder?

4 A Yeah.

5 Q Now, were these lyrics that you wrote, were these things
6 that you had done, true things?

7 A No.

8 Q Or just things that came to you?

9 A Just playing with words.

10 Q Okay. And did you listen to music like this as well?

11 A Yes.

12 Q Okay. You listen to a lot of rap?

13 A Yes.

14 Q And what kind of rap did you listen to?

15 A Gangsta music. I don't know. I don't know how to put it.

16 Q All right. Now, the stuff that you wrote and the stuff that
17 you listened to, were the themes similar?

18 A Yes.

19 Q Did you consider Bo and Rock good friends?

20 A Yes.

21 Q How often did you all work together, see each other?

22 A We seen each other all the time. Like, all the time. Every
23 day. I mean, not all the time we didn't see each other. Just
24 seen them most every day, mostly every day.

25 Q Now, was this rap thing something that you were hoping would

1 work, that would you succeed at?

2 A Yeah. Yes.

3 Q Let me ask you a question. After Bo got locked up, did you
4 ever get mail from him?

5 A Yes.

6 Q Did you ever get a letter from him that was addressed to
7 Rock?

8 A I don't know. More than likely, I mean everybody got mail
9 from whoever.

10 Q Okay. Let me ask you this, then. Did you ever get a letter
11 from Bo that you opened that had instructions to murder a
12 gentleman by the name of Claudus Lassiter?

13 A No.

14 Q You never got a letter like that?

15 A No.

16 Q Had a map in it?

17 A No.

18 Q Something you might have opened in front of your brother?

19 A No.

20 Q Did your brother carry a gun?

21 A No. I mean, no.

22 Q No, never, or no not all the time?

23 A I mean, I seen one before, but, I mean, I don't, you know,
24 don't be around it like that, like that to see. I don't know,
25 really.

1 Q Did you ever have occasion, then, to take guns that belonged
2 to Mr. Hayes and lend them to people?

3 A No.

4 Q Did you ever take a gun that belonged to Mr. Hayes and lend
5 it to one of the twins?

6 A No.

7 Q Did you ever take a gun that belonged to Mr. Hayes and give
8 it to Willie?

9 A No.

10 Q Did you sell drugs around that time, 2000, 2001?

11 A Yes.

12 Q All right. How did you obtain your drugs?

13 A Stole them.

14 Q How did you steal them?

15 A Where I lived at is like a common drug neighborhood. So I
16 just see somebody put their stash down and leave out my house and
17 go get it.

18 Q You would go out after you saw someone put their stash and
19 take it when they weren't looking?

20 A Yes.

21 Q And then you would sell it?

22 A Yes.

23 Q Did you ever buy drugs from Mr. Mitchell?

24 A No.

25 Q Was Rock hustling at the time?

1 A Yeah, I guess. Yes.

2 Q Were you working with him? Was he hustling? Were the two
3 of you enterprise or an outfit or anything like that?

4 A No.

5 Q Do you know where he got his drugs?

6 A No.

7 Q Did he buy them from Bo?

8 A I don't know. No.

9 Q Did you ever, with or without Mr. Hayes, for that matter,
10 with Rock and Bo, vial up drugs, package drugs together?

11 A Can you say that again?

12 Q Sure. Was there ever an occasion in the presence or outside
13 of the presence of Mr. Hayes, did you ever, with Rock and Bo,
14 vial up drugs, package drugs together?

15 A No.

16 Q All right. How would Mr. Mitchell react when he was aware
17 of the fact that you were hustling?

18 A We couldn't go to the studio.

19 Q Say that again.

20 A We couldn't go to the studio and stuff.

21 Q Why was that?

22 A Because he told us he wasn't doing that type stuff. It was
23 a different way, music.

24 Q Okay. Were a lot of people out on Woodlawn hustling?

25 A On where?

1 Q On Woodlawn?

2 A It's Woodland. Yeah. Yeah. A couple people out there.

3 Q Were they working together in groups or --

4 A No.

5 Q All right. So what would happen if you were out hustling on
6 Woodlawn and you someone came up that you knew wanted to buy
7 drugs? What would the street look like? What would you do?

8 A Can you say one more time?

9 Q Sure. If you were out hustling on Woodland and you saw a
10 customer, how would you react or how with other people react?

11 A Everybody try to run to them and make the sale.

12 Q Every man for himself?

13 A Yeah.

14 Q Now, you indicated that you just met me for the first time a
15 couple weeks ago, right?

16 A Yes.

17 Q Mr. Harding asked if you had met him on a prior occasion,
18 right?

19 A Yes.

20 Q And was that when you were testifying before a grand jury in
21 this matter?

22 A Yes.

23 Q Okay. So you were subpoenaed to testify before the grand
24 jury and you did testify before the grand jury?

25 A Yes.

1 Q All right. And you had been in court, you said, on several
2 occasions in this trial, right?

3 A Yes.

4 Q Okay. And the two agents here, they were present when you
5 were present?

6 A Yes.

7 Q Okay. Court's indulgence, please?

8 (Pause in Proceedings.)

9 MR. LAWLOR: That's all I have. Thank you. Thank you,
10 Mr. Herbert.

11 THE COURT: Mr. Harding. Would you like some water,
12 Mr. Herbert?

13 THE WITNESS: No.

14 CROSS EXAMINATION

15 BY MR. HARDING:

16 Q Where were you living back in 2002, Mr. Herbert?

17 A With my mother. I mean at the beginning part of the year I
18 was living with my sister.

19 Q And what's that address?

20 A 29, I think it's, it's either 10 or it's 13. Something
21 like, it's one of them.

22 Q What street?

23 A Edgecombe Circle, North.

24 Q And your mother lives very near there, doesn't she?

25 A Yes.

1 Q What street does she live on?

2 A Dupont Avenue.

3 Q And what's the address on Dupont?

4 A 2910.

5 Q Okay. It's 2910 Dupont for your mother and 2910 or 13 for
6 your sister?

7 A Yes.

8 Q Okay. What's your sister's name?

9 A Ayesha Hayes.

10 Q Now, how old are you now, Mr. Herbert?

11 A 24.

12 Q Okay. And you said that you'd known Mr. Harris since about
13 1999. So that would be nine years ago, since you were about 15?

14 A Yeah. Something like that.

15 Q You're 24 now?

16 A Yeah.

17 Q Okay. Would you say you grew up together, then, after --

18 A No. Not, not really.

19 Q Okay.

20 A I mean, like my grandmother just lived around there. So I
21 would just come around the neighborhood. I didn't live around
22 there, though.

23 Q Okay. But you became very tight with him, did you not?

24 A Uh-huh.

25 Q Very tight with Bo, also, after you met him in about, what

1 year did you meet him?

2 A 2001.

3 Q And you became tight with him, also?

4 A Um-hum.

5 THE COURT: You have to say yes or no.

6 A Yes. Yes.

7 Q In fact, you, before they got locked up, you saw them every
8 day?

9 A Yes.

10 Q And even after that, you frequently spoke to them while
11 they've been in jail, haven't you?

12 A Yes.

13 Q Because you could speak over the telephone pretty easily
14 from jail, right?

15 A Say that again.

16 Q You can speak pretty easily to people by telephone in jail,
17 right?

18 A I don't know what you mean by easily. But I talk to them
19 over the phone.

20 Q Yeah. I mean, they call you from jail, right?

21 A Oh, yes.

22 Q Both of them do?

23 A Yes.

24 Q And you go to visit them from time to time?

25 A Yes.

1 Q And you've also gotten letters, you told us, from Bo. Have
2 you gotten letters from Mr. Harris, also?

3 A I probably did but I can't point right to it.

4 Q Okay. Have you gone to visit them many times?

5 A Several. No, can't say many. But a good bit.

6 Q When you go over there, do you visit both of them or just
7 one of them?

8 A Sometimes, it depends. If I go, I mean, I go visit one one
9 day, one another day.

10 Q I see. Have you been more than a couple dozen times, you
11 think, since they've been locked up back in -- they've been
12 locked up a long time?

13 A A couple dozen?

14 Q Yeah.

15 A No. I can't say a couple dozen. I don't even think it's
16 been over 12, truthfully.

17 Q Okay. Is that 12 for both of them or 12 apiece?

18 A I say together.

19 Q Okay. Now, on the Shakedown Entertainment, you said you
20 didn't recognize the name Sheistyville, is that right?

21 A No, I didn't say I didn't recognize it. That wasn't the
22 name of the, the label.

23 Q What was that the name of?

24 A That's just a neighborhood name.

25 Q Okay. Did your Shakedown use it, also, in connection with

1 its rap music enterprise?

2 A I really didn't understand the last part of it.

3 Q Didn't Shakedown also use that name, Sheistyville?

4 A Oh, yeah. Yeah. Yeah. Yeah. Yeah. Yes, I mean.

5 Q Didn't you guy call yourselves that as a group,
6 Sheistyville?

7 A No. That was just a neighborhood. That's what we call our
8 neighborhood.

9 Q Neighborhood being Park Heights?

10 A Yeah.

11 Q Okay.

12 A Like Woodland.

13 Q Okay. A particular part of Park Heights, is that what
14 you're saying?

15 A Yeah. Kind of.

16 Q And the people in the rap group, you gave us some names.
17 But really, it was just you and Shelton and a guy named Slo.
18 Remember Slo?

19 A Yes.

20 Q Okay. And what's his name?

21 A Slo?

22 Q Yes.

23 A Marvin. I don't know his last name.

24 Q You don't know his last name?

25 A Nuh-uh.

1 Q You've been rapping with him for years but you don't know
2 his last name?

3 A I call him Slo.

4 Q Right. Okay. And there were others who were in the group
5 at one point but kick, got kicked out or left, is that right?

6 A Uh-huh. They left. Kicked out, left, whatever.

7 Q Like the twins, whom you mentioned?

8 A Um-hum.

9 Q And a guy named Little White or Dwight. Do you remember
10 him?

11 A Yeah.

12 Q He's another one, did he get kicked out or did he leave on
13 his own?

14 A He just didn't come around. He wasn't in the group long,
15 anyway. He was never officially in the group.

16 Q And of course, the leader was Bo, even though he didn't rap.
17 He was the producer, right?

18 A The CEO.

19 Q CEO, okay. Did there come a time, Mr. Herbert, when Bo,
20 your friend, went to see, went to a party at Hammerjacks to see a
21 guy named Kevin Lyles?

22 A Yeah.

23 Q And he went there to, partly because he wanted to promote
24 you guys as a rap group, right?

25 A Yes.

1 Q Speak to Kevin Lyles, maybe get you guys an interview with
2 an executive with Def Jam records? Wouldn't that be nice?

3 A Um-hum.

4 Q Was that the idea?

5 A Yes, I guess. I really don't know.

6 Q Okay. Because you weren't there, right?

7 A Right.

8 Q You just know what he told you, right?

9 A Right.

10 Q And he got banked at that party, didn't he? I mean, he got
11 beaten up afterwards with his cousin, Donte, right?

12 A Yeah.

13 Q His cousin is Donte Sands. Do you know him?

14 A Donte. I don't know his last name.

15 Q Okay. Do you remember that after that, you heard that Bo
16 and Shelton were responsible for the murder of --

17 MR. LAWLOR: Objection.

18 THE COURT: You may complete the question.

19 Q You heard, did you not, that Bo and Shelton were responsible
20 for a murder that occurred in Hasim Rahman's car, is that
21 correct?

22 MR. LAWLOR: Objection. Ask the jury be instructed to
23 disregard the question, Your Honor.

24 THE COURT: The jury knows that counsel's questions are
25 not part of the evidence. The question, Mr. Herbert, is did you

1 hear this? There's been evidence in this case. The question is
2 proper, did you hear this? Not whether you believed it, not
3 whether you have an opinion about it. Just did you hear this on
4 the street?

5 THE WITNESS: After they was, after they was locked up?
6 Yes.

7 THE COURT: Go ahead, Mr. Harding. The answer was
8 after they were locked up.

9 BY MR. HARDING:

10 Q After they were locked up, what? You did hear it?

11 A Bo, yeah. He was locked up.

12 Q In fact, after he was locked up, you talked to Bo, didn't
13 you?

14 A Yeah. I talked to him.

15 Q And that was when he got locked up for the Hammerjacks
16 incident initially, right?

17 A Yes. That's what it supposed to have been.

18 Q Okay. But then he got charged with another double homicide
19 of a couple of guys near Wabash Avenue. Do you remember that?

20 A I don't remember but, yeah, that's what he was supposed to
21 be charged with, murder, something.

22 Q Okay. Do you remember, you had a conversation with him by
23 phone in jail and you asked him what was up with the two boys
24 across the track? Do you remember that?

25 A Yeah. I mean --

1 Q And he didn't, he didn't exactly deny it, did he? He said,
2 quote, "I don't want to talk about this over the phone?" Isn't
3 that what he told you?

4 MR. LAWLOR: Objection to the characterization, Your
5 Honor.

6 THE COURT: The objection's overruled. You may answer.

7 Q Isn't that what he told you?

8 A Yes. Something like, yeah, something like that.

9 Q Now, you remember when your, what the guy you call your
10 brother, whom you're not really related to, Rodney Hayes, do you
11 remember when he got assaulted in jail by Mr. Harris, by Rock?

12 A Yes.

13 Q You actually spoke to Shelton on the phone right after that,
14 didn't you?

15 A Uh-huh.

16 THE COURT: You have to say yes or no.

17 A Yes.

18 Q And he told you why he did it, didn't he?

19 A He said because he was lying, because Rodney lied on him.

20 Q Actually, he said that he did it because Rodney was going to
21 testify against him, isn't that right?

22 A He said because Rodney was lying on him.

23 Q Okay. And you asked him how he knew that?

24 MR. MARTIN: Objection, Your Honor.

25 THE COURT: Overruled.

1 MR. MARTIN: It's a hearsay answer, Your Honor.

2 THE COURT: Overruled. You may answer.

3 BY MR. HARDING:

4 Q Is that right?

5 A Yes.

6 Q And he said because his lawyer --

7 MR. MARTIN: Objection, Your Honor, move to strike.

8 THE COURT: The objection's overruled. The motion is
9 denied. Go ahead, Mr. Harding.

10 Q He said it was because, Shelton said it was because his
11 lawyers told him, isn't that right?

12 A Yeah. Something like that.

13 Q You've told us about Woodland Avenue. Shelton Harris was
14 dealing crack out on Woodland Avenue, wasn't he, Mr. Montana?
15 Should I call you Herbert or Montana?

16 A You can call me Mark.

17 Q Okay. I prefer to call you Herbert, Mr. Herbert, because
18 it's not considered courtroom decorum to call people by their
19 first names.

20 THE COURT: We prefer last names in court, Mr. Herbert.

21 A Okay.

22 Q Rock sold crack out on Woodland Avenue, too, didn't he?

23 A At a time.

24 Q Actually, he did it for a long time, didn't he?

25 A I don't know how long he did it.

1 Q Did it for years, didn't he?

2 A I don't know how long he did it.

3 Q He did it in the 3500 block, isn't that right?

4 A That's where we hung at.

5 Q That's where you and he hung at?

6 A I mean, my grandmother lived up that way. So yeah, you
7 could say I hung up there.

8 Q In fact, Rodney Hayes hung up there and sold crack on
9 Woodland Avenue in the 3500 block, isn't that right?

10 A At a time.

11 Q Well, he did it for a long time, too, didn't he?

12 A Not on Woodland Avenue.

13 Q Where?

14 A I mean, he didn't always hang on Woodland. I don't know
15 where he else, place he hung at. I'm just saying he didn't
16 always hang on Woodland.

17 Q And that's why you used to deal crack, also, isn't that
18 right?

19 A Correct.

20 Q Now, you actually came down to see me and another prosecutor
21 and some federal agents on two occasions, isn't that right, Mr.
22 Herbert?

23 A Correct.

24 Q The first time was in 2004, isn't that right?

25 A I'm not really sure what year it was. But I know I came

1 twice.

2 Q Okay. And do you remember telling us that you were in
3 frequent contact with Mr. Harris and Mr. Mitchell both, is that
4 correct?

5 A I believe.

6 Q Even though they were locked up?

7 A I believe.

8 Q Okay. In fact, you told us that you'd just spoken with Mr.
9 Harris that very day when we had you come down to talk to us. Do
10 you remember that?

11 A Yeah. I mean, I --

12 Q And we went over what happened on the night of the murders
13 in Hasim Rahman's car, do you remember that?

14 A Um-hum.

15 THE COURT: You have to say yes or no.

16 A Oh, yes.

17 Q And it was me and my co-counsel at the time, Christine
18 Manuelian, and another, and two other agents. Do you recall
19 that?

20 A I don't know who was there. I mean, it was other people
21 there but I don't know their names.

22 Q Do you remember we told you we didn't believe you?

23 A Uh-huh. Yes.

24 Q We made that very clear, didn't we?

25 A Yes.

1 Q Okay. And then Rodney Hayes got arrested in 2005, the guy
2 you call your brother. And that's when he got brought down here
3 and he got assaulted by Mr. Harris. Do you remember that?

4 A Yes.

5 Q Okay. And shortly after that, we actually brought you back
6 to testify in the grand jury. Do you remember that?

7 A Yeah. Yes.

8 Q Okay. And you were served with a subpoena to testify in the
9 grand jury. Do you remember that?

10 A Twice.

11 Q You got served with a subpoena the first time, too?

12 A Yes.

13 Q And we didn't put you in the grand jury, did we?

14 A Yes. I mean, no, you all didn't.

15 Q We didn't believe you?

16 A I don't know why you all just didn't.

17 Q Okay. But you knew we didn't believe you?

18 A That's what you all said.

19 Q Okay. And then you got served with another subpoena and you
20 came in. And you told us that you'd spoken to your lawyer?

21 A Yes.

22 Q Who was your lawyer?

23 A Christy Needleman.

24 Q Needleman?

25 A Yes.

1 Q Okay. And you had her give me a phone call; do you recall
2 that?

3 A Yes.

4 Q Okay. And you knew that she called me, right?

5 A Yes.

6 MR. LAWLOR: Objection, Your Honor.

7 THE COURT: Overruled.

8 Q Did you say yes?

9 A Yes.

10 Q Okay. And she explained your rights to you, didn't she, Mr.
11 Herbert?

12 MR. MARTIN: Your Honor, this is surely privileged.
13 Objection.

14 THE COURT: The objection's overruled.

15 A I'm not really sure on what you're asking me.

16 Q Well, I'm sure she explained to you that you had a right not
17 to answer any questions that might incriminate you, for example,
18 right?

19 A Oh, yes.

20 Q Okay. And in fact, when you came down to see me and the
21 agents and Ms. Manuelian, we told you that, also, right?

22 A Yes. Yes.

23 Q Okay. In other words, you could just not answer a question
24 if it meant you were going to have to admit to a crime by
25 answering it, is that right? You understood that, right?

1 A Yes.

2 Q Okay. But in fact, you did testify in the grand jury and
3 you answered every single question, right?

4 A Yes.

5 Q And that's because you had no intention of incriminating
6 yourself, isn't it?

7 A Correct.

8 Q For example, you've told us you have two narcotics
9 convictions, right, Mr. Herbert?

10 A Yes.

11 Q Do you remember that?

12 A Yes.

13 Q Do you remember testifying in the grand jury that those were
14 the only two occasions in your whole life when you had
15 distributed drugs, and you just happened to get arrested on those
16 only two times --

17 A Yes.

18 Q -- you ever, you ever dealt drugs?

19 A Yes, I testified to that.

20 Q And that's because you knew that if you admitted to dealing
21 drugs on other occasions, you could conceivably be charged with
22 it, isn't that right?

23 A Correct.

24 Q So you lied to the grand jury?

25 A I never said I sold drugs but them two times you just asked

1 me, the first time.

2 Q You mean you're claiming that the only two occasions in your
3 whole life just happened to be the two times when the police
4 arrested you and locked you up?

5 A Yup. I mean yes.

6 Q Okay. And you know that if you admitted to dealing drugs on
7 other occasions now, you could conceivably be prosecuted for
8 them, right?

9 A I don't know. I don't know that.

10 Q You don't know that?

11 A If I say that I sold drugs before, I didn't know that.

12 Q One of those times you got arrested for dealing drugs was in
13 the 3500 block of Woodland Avenue?

14 A Uh-huh.

15 Q And you had a bag with 20 vials of crack in it at the time,
16 is that correct?

17 A I guess. If that's what the charge papers say. I'm not
18 really sure. It was a while ago.

19 Q One time you made a sale to an undercover agent and then
20 tried to run away on foot when they tried to arrest you. Do you
21 remember that?

22 A I didn't serve an undercover. I mean, I served a lady. She
23 had marked money. But I never served an undercover.

24 Q You're right. She paid you \$10 in prerecorded -- she was a,
25 she was working as an agent of the police at the time and she

1 purchased a ten dollar vial of crack from you in the 3500 block
2 of Woodland Avenue. And then when the arrest team responded, you
3 fled on foot and ran into 3505 --

4 MR. LAWLOR: Objection, Your Honor.

5 Q -- Woodland Avenue?

6 MR. LAWLOR: Is that a question, Your Honor?

7 THE COURT: I think it is.

8 Q You ran into 3505 Woodland Avenue, Apartment 2-C?

9 A I'm not really sure of the apartment. But that happened,
10 something like that.

11 Q But you did run into the building and hide in a back
12 bedroom, is that correct?

13 A Uh-huh.

14 Q But the police caught you, is that right?

15 A Yeah.

16 Q And that's when they found a brown paper bag containing 20
17 additional clear top vials of crack, is that right?

18 A They didn't find it on me.

19 Q No, they didn't find it on you. They found it to the, in
20 the area where you had retrieved the vial that you sold to the,
21 to the woman that was working for the police, right?

22 A I guess that's where they found it. I guess that's where
23 they found it at. I don't know where they found it.

24 Q The other occasion you had a bag containing five crack vials
25 and you were observed making a sale to a woman near 3501 Woodland

1 Avenue, is that correct?

2 A Yes.

3 Q And you're asking us, just as you asked the grand jury, to
4 believe that those were, just happened to be the only two times
5 in your whole life that you ever dealt drugs, is that correct,
6 Mr. Herbert?

7 A Can you repeat the question?

8 Q You're asking us to believe, just as you did ask the grand
9 jury, that those were the only two occasions in your whole life
10 when you ever dealt drugs?

11 A I'm telling you all the truth. I ain't really asking you
12 all to believe me. I'm just telling the truth.

13 Q You also denied possessing a gun back in 2002, isn't that
14 correct?

15 A Correct.

16 Q And with respect to the letter that Mr. Lawlor was just
17 asking you about that you didn't seem to actually recall, a
18 letter from Bo addressed to Shelton Harris, you don't recall a
19 letter instructing, containing instructions about the murder of a
20 guy named Claudus Lassiter, is that right?

21 A No.

22 Q Do you remember we asked you about that when you came in to
23 testify in the grand jury?

24 A Yes.

25 Q No one had ever asked you about that before you came in to

1 the grand jury, is that right?

2 A Correct.

3 Q Okay. The detectives never asked you about it?

4 A And they asked me in that, the little room that they talk to
5 you in.

6 Q Outside the grand jury room?

7 A Yes.

8 Q You mean the detectives, when we were there, asked you about
9 it?

10 A Right.

11 Q Yeah. But nobody asked you before that day you came in to
12 the grand jury. Do you remember that?

13 A Right.

14 Q And even though this letter had been sent, supposedly, three
15 years earlier, you immediately claimed that you had never opened
16 it. Do you remember that?

17 A I don't know if I immediately answered that. But I told
18 you, if a letter had been sent for someone else, then I didn't
19 open it.

20 Q Okay. Now, you've told us already that you're very tight
21 with Bo and Rock, is that right?

22 A Yes.

23 Q And in fact, if we read some of the rap lyrics in these
24 songs that you participated in singing, there's frequent
25 reference to you in the songs. Do you recall that?

1 A Say it again. It's reference?

2 Q You're referred to in the songs, is that right?

3 A Probably.

4 Q The name, TM, is in the songs, right?

5 A Some of them. Yeah. Some of them.

6 Q And TM stands for Tony Montana. Tell us who Tony Montana
7 was.

8 A Scarface.

9 Q Scarface from a movie, right?

10 A Um-hum.

11 Q Played by Al Pacino?

12 A Correct.

13 Q And he was a mobster, right?

14 A No.

15 Q A gangster?

16 A Yeah. I guess.

17 Q In the movie?

18 A I guess so. I mean --

19 Q You've seen the movie, haven't you?

20 A Um-hum.

21 THE COURT: You have to say yes or no.

22 A Oh, yes, I seen the movie.

23 Q Okay. Here's some lyrics that you may recall. Bo's
24 general, I'm the captain, Slo's Sergeant now. TM stepped up from
25 a private. No need to hide it. He was loyal, dedicated, plus

1 survived riots. Do you remember that?

2 A Yeah.

3 Q Okay. This is Rock singing this, right?

4 A Um-hum.

5 Q And Rock wrote those lyrics, didn't he?

6 A Um-hum.

7 THE COURT: You have to say yes or no.

8 A Yes. I'm sorry.

9 THE COURT: That's all right. It happens.

10 Q Here's another line in another song. TM, the youngest
11 soldier of this Shakedown militant shit. Do you remember that?

12 A I really don't remember it but I see it and it says, I guess
13 it's true.

14 Q Okay. Let me see if I got another one here. This one you
15 may not remember, I suppose. This is from another song. This is
16 Mr., this is Rock singing again. TM in this bitch. What does
17 that mean, Mr. Herbert?

18 A I don't even know what song -- I don't know. I mean, TM,
19 that just mean probably I was in the studio with them at the
20 time. That don't mean, or he was giving me a shout out, you
21 know. Just, you know.

22 Q Means you're in the studio with him?

23 A Studio. He could have just been saying my name because we
24 rap together. It don't necessarily mean I was there. That's
25 just, you know, part of, I mean, that's my, I don't know how to

1 explain music to nobody. I'm sorry.

2 Q Your sister was very tight with Bo, too, wasn't she?

3 A Um-hum.

4 Q She was --

5 THE COURT: You have to say yes or no.

6 A Oh, yes.

7 Q She had an intimate relationship with Mr. Mitchell?

8 A I don't know what they did in the bedroom.

9 Q Okay. You didn't know that they were lovers, is that right?

10 A I mean, I don't know what they do in the bedroom. That
11 ain't my thing, watching and stuff.

12 Q Might be playing Play Station Two in the bedroom?

13 A I don't, I don't play video games.

14 Q Okay. And Ayesha's been coming to this trial, you told us
15 already, on days when you've been here and on days when you
16 haven't been here, right?

17 A Yes.

18 Q Because she still stays in close contact with Mr. Mitchell,
19 also, right?

20 A Yes.

21 Q In fact, when you, when you first learned about Mr. Lawlor
22 wanting to talk to you, wasn't it because he gave his business
23 Card to Ayesha to take to you? Isn't that what happened?

24 A Say it again?

25 Q Did Ayesha bring you Mr. Lawlor's business card?

1 A No.

2 Q How did you find out Mr. Lawlor wanted to talk to you?

3 A She gave my phone and name and called.

4 Q She gave you a phone?

5 A Yeah. She just told me call him. She didn't give me no
6 business card. She gave me the number.

7 Q Okay. She was very tight with Bo back in 2002, also, wasn't
8 she?

9 A Yes.

10 Q Okay. Mr. Herbert, let me ask you about your tattoos.

11 MR. LAWLOR: Objection, Your Honor.

12 THE COURT: Overruled.

13 Q Tell us about the tattoo on your left bicep.

14 A Bicep?

15 Q That's your left arm. Yes.

16 THE COURT: He didn't ask you to show it.

17 A No, I was looking.

18 THE COURT: You need to remind yourself? I understand.

19 A It say, that's right here, right?

20 Q Yeah. Let's try right there.

21 A Okay. It say, Love, loyalty, Honor, before betrayal always.

22 THE COURT: I'm sorry. Say that again.

23 A Love, loyalty, honor before betrayal always.

24 Q Okay. So that's sort of like, doesn't that mean something
25 like you would never snitch on anybody? You would never get them

1 into trouble, isn't that right?

2 MR. LAWLOR: Objection.

3 Q If you were tight with them?

4 THE COURT: Overruled. You may answer.

5 A You ask me is that what my tattoo mean?

6 Q Yeah.

7 A No, I mean, it's just a tattoo. It say, love, loyalty,
8 honor. I picked it out a book. So, I mean, I don't know what
9 the person who made it concept, whatever it was. I just thought
10 it would be good.

11 Q So you would never betray anybody you were close to, would
12 you?

13 A I mean, no. No.

14 Q No?

15 A No. Who would?

16 Q Okay. Let me ask you about another tattoo. You have on
17 your right arm a tattoo that says STLT, right?

18 A Um-hum.

19 Q What does that stand for?

20 THE COURT: You have to say yes or no.

21 A Oh, yes.

22 Q What does that stand for?

23 A Street life thug.

24 Q Well, didn't you tell the grand jury that it stood for Stay
25 True Loyal, Too?

1 A Right.

2 Q So that means sort of the same thing, right?

3 A Stay True Loyal, Too. Under that say fam first.

4 Q Fam first?

5 A Yeah.

6 Q Family?

7 A That's what that's all a part of one tattoo.

8 Q And who's in your family?

9 A My sister, my mother, my father, my son.

10 Q What about Shakedown? Is that part of your family?

11 A No. That's part of a business.

12 Q Was that part of your family back in 2002?

13 A I mean, it just was a label that I was trying to rap so we
14 could get out the streets there, you know, the ghetto, where we
15 from.

16 Q Tell us about the tattoo on your neck.

17 A Which one?

18 Q SD.

19 A SD not on my neck.

20 Q Where is it?

21 A I don't have SD on me. I got SV on me.

22 Q SV.

23 A Yeah.

24 Q What's that stand for?

25 A My neighborhood. Sheistyville.

1 Q Sheistyville?

2 A Yeah.

3 Q Stands for your rap group, also, doesn't it?

4 A No. The rap group called Shakedown.

5 Q Oh. Mr. Herbert, you know what happens to snitches, right?

6 A Do I know what happens to them?

7 Q Yeah.

8 A Nothing.

9 Q Nothing? You guys sang songs about them all the time.

10 A Rap is 99% lies.

11 Q Mr. Harris didn't think so, did he?

12 A Repeat the question.

13 Q Mr. Harris didn't think that was true, did he?

14 MR. MARTIN: Objection to what Mr. Harris might have
15 thought.

16 THE COURT: Sustained. That means don't answer.

17 THE WITNESS: Okay.

18 BY MR. HARDING:

19 Q This is one of Mr. Harris's lyrics, isn't it? To you it
20 might be entertainment, but I'm speaking the truth. Death before
21 dishonor, never talk to homicide. Rock didn't want to be a
22 studio gangster, right?

23 A I don't know. I mean, I don't know what he wanted to do.

24 Q That's why he wrote about real crimes in his songs?

25 A I don't know if they wrote crimes. I don't know. That's

1 just his creativity, writing.

2 Q Now, even though you've been staying very close to Bo and
3 Shelton they never, there nevertheless came a time when they
4 thought that you had ratted on them, didn't there?

5 MR. LAWLOR: Objection to what they knew, Your Honor.

6 THE COURT: Overruled. You may answer.

7 A I didn't never hear you. So can you say it again one more
8 time?

9 Q There came a time when they thought you had ratted on them,
10 didn't there?

11 A I don't know.

12 Q Well, let me play you something, Mr. Herbert.

13 THE COURT: Counsel aware what you're about to do, Mr.
14 Harding?

15 MR. HARDING: I'm about to play the beginning of the
16 Stop Snitching video.

17 THE COURT: All right. Do you need to toggle the --
18 BY MR. HARDING:

19 Q Yup. Sure do. Can you see this on your screen, Mr.
20 Herbert?

21 A Yeah. I can see something. Ain't nothing playing, though.
22 Stopped.

23 THE COURT: Just a moment, Mr. Harding. Okay. I guess
24 it's working.

25 MR. HARDING: Not coming through very well.

1 THE COURT: Are the speakers turned on?

2 MR. HARDING: I thought they were. Yeah, they're on.
3 Maybe I'm not plugged into the right hole.

4 (CD playing.)

5 BY MR. HARDING:

6 Q They put your name out there, didn't they, for ratting on
7 down, isn't that right, Mr. Herbert?

8 A Somebody did.

9 Q Well, that must be a very scary thing, to have your name put
10 out there in the name famous Stop Snitching Two video?

11 A I ain't worried about it.

12 Q You ain't worried about it?

13 A Um-um.

14 Q Isn't it true that you think that by coming here today and
15 testifying for them that you can sort of escape the problem that
16 is created by the Stop Snitching video?

17 A Say that again. I don't --

18 Q People think you're a snitch, isn't that right?

19 A No.

20 Q Some people do, isn't that right?

21 A Might do. I don't know.

22 Q You did testify in the grand jury, didn't you?

23 A That some people might think I'm a snitch?

24 Q Yeah.

25 A I didn't testify to that in no grand jury. I don't think I

1 did, anyway.

2 Q People thought you told the truth in the grand jury, isn't
3 that right?

4 A What you mean, people thought I told -- I did tell the truth
5 in the grand jury.

6 Q Okay. People thought you were a snitch, isn't that right?
7 Isn't that what we just heard on the Stop Snitching?

8 A I mean, yeah. That was on the tape. But all I heard,
9 te-te-te-te-te-te. So I couldn't really --

10 Q You didn't hear your name?

11 A I heard the name. But I don't know who that was talking
12 saying that I was -- I don't know that voice. I don't know that.
13 That's behind me.

14 Q That's behind you?

15 A I mean, I'm not worried about that. I got other things to
16 worry about. Taking care of my child. Not TV.

17 Q No further questions, Your Honor.

18 MR. MARTIN: Your Honor, Mr. Coburn has to leave, so
19 can we let him go ahead of us?

20 THE COURT: Members of the jury, Mr. Coburn has another
21 pressing commitment, and with the Court's permission, he's going
22 to have to leave us a little early today. And he won't be with
23 us tomorrow but he'll be re-joining us. You may proceed, Mr.
24 Coburn.

25 CROSS EXAMINATION

1 BY MR. COBURN:

2 Q Thank you so much, Your Honor. Mr. Herbert, good afternoon.

3 A Good afternoon.

4 Q So if I understand it correctly, you do not have a pending
5 charge against you right now, is that right?

6 A No.

7 Q What I said is correct, right?

8 A Do I have a pending charge?

9 Q You don't have a charge, right?

10 A No.

11 Q And so you don't have a plea agreement with the government,
12 right?

13 A No. No.

14 Q You don't have counsel -- well, strike that. I mean, you
15 don't have counsel in a pending case right now, is that right?

16 A No.

17 Q That's right, right?

18 A I mean, yeah, that's right.

19 Q Okay. You don't have a cooperation agreement with the
20 government that makes it incumbent on you to do certain things
21 and then says the government will do certain things, right?

22 A No, not --

23 Q Correct?

24 A No, not that I know of.

25 Q Okay. You don't have a sentencing coming up at which the

1 government might speak on your behalf, right?

2 A No.

3 MR. HARDING: Objection to the leading, Your Honor.

4 THE COURT: Overruled. Go ahead, Mr. Coburn.

5 Q Thank you, Your Honor. And yet you are here testifying,
6 despite the fact that you have not actually received a subpoena,
7 correct, Mr. Herbert?

8 A Right.

9 Q The government just cross examined you and told you they
10 don't believe you, right?

11 A Right. Yes.

12 Q Now, if I understand correctly, Mr. Herbert, you have known
13 Mr. Harris since you were about 15 years old, right?

14 A Correct.

15 Q And you met Bo back in 2001, right?

16 A Correct.

17 Q And in response to questions from Mr. Harding, you told us
18 this afternoon that you have been in frequent contact with both
19 of those gentlemen over the years, right?

20 A Correct.

21 Q You told us that you've been involved in Shakedown
22 Entertainment, right?

23 A I'm no sure what you mean by that.

24 Q Okay. You rapped and wrote music, right?

25 A Yeah. Yes.

1 Q And there was a CD made, right?

2 A Yes.

3 Q You've been in the studio making music for Shakedown
4 Entertainment, correct?

5 A Yes.

6 Q And you also testified about the sale of drugs on Woodland
7 Avenue, right?

8 A That I sold?

9 Q You said, you testified that you sold and that other people
10 sold on Woodland Avenue?

11 A Yes.

12 Q Correct?

13 A Yes.

14 Q And you mentioned the twins, right, during your testimony?
15 You mentioned some people you called the twins?

16 A About rapping?

17 Q No. You just mentioned them this afternoon when you were
18 testifying before the jury, right?

19 A Yeah.

20 Q And you mentioned someone called Lil White, right?

21 A No.

22 Q You remember saying the name Lil White today here in the
23 courtroom?

24 A He, he --

25 Q He asked you about it?

1 A Right. And I just responded.

2 Q Fair enough. And he asked you about someone named Dwight,
3 right?

4 A Yes.

5 Q Who is Shawn Gardner?

6 A I mean, he right there.

7 Q Okay. Did you mention his name at any point during your
8 testimony until right now?

9 A No.

10 Q Did you mention him in connection with Shakedown
11 Entertainment at all?

12 A No.

13 Q Thank you. Nothing further.

14 THE WITNESS: Okay.

15 CROSS EXAMINATION

16 BY MR. CROWE:

17 Q Mr. Herbert, my name is Tom Crowe. I represent a man named
18 Shelly Wayne Martin. James Pyne, who's seated at the end of the
19 table in the white shirt, represents him, also.

20 Have you ever spoken to either Mr. Pyne or myself?

21 A No.

22 Q Have you ever seen Shelly Wayne Martin any place other than
23 in this courtroom?

24 A No, not that I know. I mean, I can't say yeah or no. But I
25 don't recall ever seeing him.

1 Q Thank you very much.

2 CROSS EXAMINATION

3 BY MR. MARTIN:

4 Q Mr. Herbert, just one question about something Mr. Harding
5 asked you. He mentioned that you told him in 2004, when you came
6 down to the grand jury, that you had talked to Shelton Harris
7 that very day. Do you recall that?

8 A He saying I did. So I mean, I might have. I really might
9 have talked to him.

10 Q Did Mr. Harris ever tell you to do anything other than come
11 down here and tell them the truth?

12 A No. He never told me do nothing.

13 Q He didn't tell you to come down here and lie, did he?

14 A No.

15 Q Thank you.

16 REDIRECT EXAMINATION

17 BY MR. LAWLOR:

18 Q All right, Mr. Herbert, just a couple quick questions and
19 we'll get you out of here.

20 You were asked about a letter in the grand jury, right?

21 A Uh-huh.

22 THE COURT: You have to say yes or no.

23 A Yes, yes, yes, yes.

24 Q And who subpoenaed you to the grand jury? The government?

25 A Yes.

1 Q Okay. And was that on -- okay. So that was July 19th,
2 2005, you testified before the grand jury, right?

3 A Yeah. I mean yes.

4 Q And Mr. Harding asked you, didn't he, then, as he apparently
5 had outside of the presence of the grand jury, if I can read from
6 this, he questioned you, did I ask you about a letter that he --

7 MR. HARDING: Objection, Your Honor.

8 THE COURT: Why don't remove it from the DOAR, Mr.
9 Lawlor. You can proceed.

10 Q Okay. Let me ask you if this is what Mr. Harding asked you
11 in front of the grand jury and the answers that you gave then in
12 2005. Mr. Harding asked you, Did I ask you about a letter that
13 he, referring to Mr. Mitchell, sent to you addressed to Shelton
14 Harris? You answered yes.

15 He asked you, Was that a letter that he sent to you
16 shortly after he got locked up in 2002? Again, you answered yes.

17 Did you tell me, Mr. Harding asked you, you didn't open
18 the letter and then you gave it to Shelton Harris? Answer was
19 yes.

20 Without opening, was the neck question. And you said
21 yes.

22 Was that your testimony before the grand jury about
23 that letter?

24 A If it's on the paper, I guess. I mean yes.

25 Q You gave truthful testimony before the grand jury?

1 MR. HARDING: Objection.

2 A Yes.

3 THE COURT: Overruled.

4 Q Now, Mr. Coburn just asked you this question. But other
5 than the promise of a subpoena that I have not even yet provided
6 you, have I given you anything in exchange for your testimony
7 here today?

8 A No.

9 Q No money?

10 A Nothing.

11 Q No promise of years off some sentence that you would have to
12 serve?

13 A No.

14 Q Okay. Mr. Harding just played for you that Stop Snitching
15 video?

16 A Yes.

17 Q Did I hear you correctly to say that you didn't recognize
18 that voice that was on the phone?

19 A It was like three different voices.

20 Q Did you recognize any of them?

21 A No. I mean --

22 Q You know Mr. Harris's voice, right?

23 A Yeah.

24 Q And Mr. Mitchell voice?

25 A Yeah.

1 Q All right.

2 A I mean yes, sir.

3 Q Mr. Harding indicated to you that in 2005 and perhaps today
4 that I guess he doesn't believe you. Did he say that?

5 A Yes.

6 Q What do we call those folks over there?

7 MR. HARDING: Objection.

8 THE COURT: Sustained.

9 Q No further questions.

10 MR. HARDING: Very briefly, Your Honor?

11 THE COURT: Yes.

12 RECROSS EXAMINATION

13 BY MR. HARDING:

14 Q Let me show you a couple more lines from these rap songs,
15 Mr. Herbert.

16 MR. LAWLOR: Objection, Your Honor. This is beyond the
17 scope.

18 THE COURT: Overruled.

19 Q It's not beyond the scope. This is from the Pure Shit album
20 that you sung with Mr. Harris and Slo back in 2002. Do you
21 remember Rock singing this line right here? It's just me, Weaze
22 and Bo back to back?

23 A Uh-huh. Uh-huh. Yes.

24 Q Who's Weaze?

25 A Can I say something?

1 Q Mr. Martin, isn't he?

2 A I can't answer that truthfully because I have a friend named
3 Weasel.

4 Q Weasel?

5 A Yeah. And we call him Weaze. So I really can't say. You
6 see what I'm saying? Like I mean, I don't really know who he was
7 talking about.

8 Q Well, let's try this one. There are lots of lines about
9 Weaze. That's why Bo and Weaze on lock now and every day on lock
10 down. Niggas getting shot down for running their mouth clown.
11 Bo was locked up with Mr. Martin, wasn't he?

12 A I mean, I guess. I don't, I don't know. Yeah. Yes. He --
13 yeah.

14 Q Did you know that this guy named Weaze was out of jail for
15 only a few weeks in 2002 before he got locked up again?

16 MR. CROWE: Objection.

17 THE COURT: The objection's overruled.

18 A No.

19 THE COURT: The answer was no.

20 Q You say that, that these rap lyrics are just about
21 creativity. But actually, they include a whole description of
22 what happened that night at Hammerjacks when it all went down.
23 Do you remember that? These are real events, aren't they?

24 A You said I wrote this?

25 Q No. I know you didn't write that. I know Mr. Harris wrote

1 that. But you helped to sing it, right?

2 THE COURT: Do you want him to read it to you, Mr.
3 Herbert?

4 A I can read it.

5 THE COURT: Okay.

6 A I'm just trying to see. Now can you say your question
7 again, please?

8 Q Do you remember participating in this rap on Track 11 of
9 Pure Shit?

10 A I'm not sure what song is Track 11 because I don't own a
11 copy of the CD no more. But it is on there. I heard it before,
12 I'm pretty sure.

13 Q Okay. That's a description of what happened at Hammerjacks,
14 isn't it?

15 A I guess. I don't know.

16 Q Sunday night at Lyles's party when it all went down, I
17 wasn't there, but if I was it would have been more clowns stabbed
18 and dragged out of the club, gagged and bagged. Best believe we
19 gonna chase y'all down and shake y'all down?

20 A Rock didn't write that.

21 THE COURT: I'm sorry. We can't hear you.

22 A Rock didn't write that.

23 Q Rock didn't write that?

24 A That's not Rock writing that. I mean, that's not a Rock
25 rap.

1 Q It's not a Rock rap?

2 A No.

3 Q How do you know, Mr. Herbert?

4 A How I know that that's not his rap? Because that's, because
5 that's not Rock verse.

6 Q How do you know?

7 A What you mean, how I know? Because I was on that song and I
8 know that's not --

9 Q Well, who's verse was it?

10 A That's Slo verse.

11 Q Slo's verse?

12 A Yeah.

13 Q Okay. Thank you. I have no further questions.

14 THE COURT: Thank you, Mr. Herbert. You're excused.
15 Members of the jury, we'll take an afternoon recess at this time.
16 Again, Mr. Coburn won't be with us when you come back but he'll
17 be rejoining us before long.

18 Please leave your note pads on your chairs. Have no
19 discussion about any of the evidence of the case so far.
20 Continue to keep an open mind. Jury's excused for a 15 minute
21 recess.

22 (Jury exits the courtroom.)

23 THE COURT: Mr. Harding, I'm going to return your list
24 and accompanying documents. Yes, Mr. Kurland.

25 MR. KURLAND: Your Honor, while we're still on the

1 record. With respect to Mr. Bacon and the arrest warrant, given
2 the Court's ruling --

3 THE COURT: Let me see if we've heard anything. I
4 suspect we haven't.

5 MR. HANLON: No, Your Honor.

6 MR. KURLAND: As long as it's preserved for the record.
7 It's my understanding the Court would not allow the letter to be
8 admitted and I guess would not allow any inquiry concerning the
9 letter. In light of the Court's ruling --

10 THE COURT: You've overstated the Court's ruling. Let
11 me make clear what the Court's ruling is.

12 The letter so far as I can tell is not admissible. It
13 is a memorialization of arguably prior inconsistent statements.
14 My understanding from Mr. Coburn's proffer was that Mr. Coburn
15 was going to put Mr. Bacon on the stand, ask some substantive
16 questions of some, of some sort. Yeah, that brought a smile to
17 my face as well, Mr. Kurland.

18 MR. KURLAND: I have to do it tomorrow so I want to
19 make sure I know the Court's ruling.

20 THE COURT: And then use the letter to impeach Mr.
21 Bacon, both any direct examination by Mr. Coburn and relatedly
22 and derivatively the prior direct, and I suppose cross
23 examination, that Mr. Bacon has offered in this trial.

24 I went back over the luncheon recess. I looked at the
25 letter again and I reaffirm my view expressed this morning that

1 the letter does not, certainly not directly contradict anything
2 that Mr. Bacon testified to.

3 The government has proffered that if Mr. Bacon were
4 here, he would explain the letter as a lulling letter purposely
5 sent to Mr. Gardner at a time when he was cooperating with the
6 government and when he did not want those he was cooperating
7 against, including Mr. Gardner, to believe or learn or be
8 convinced that he was cooperating. So it was a lulling letter.
9 That's what the government's proffer is as to what Mr. Bacon
10 would say.

11 So that's my ruling. So I'm not saying you can't call
12 Mr. Bacon. As you heard --

13 MR. KURLAND: I understand, Your Honor. I would only
14 add just, so the record's clear, because depending on the Court's
15 answer here it will determine whether or not it's even worth
16 pursuing. It's my position that when in the letter, when he says
17 that the government's making me lie, that that isn't character
18 evidence. That's actually evidence specifically that he's lying
19 in this case, in which there is no 609 impeachment issue. I
20 would say that that's substantive evidence that should be able to
21 be pursued.

22 If the Court, if that is inconsistent with the Court's
23 ruling, then, then there's no need to get Mr. Bacon. I just want
24 to preserve the record on that, if the Court's saying that that
25 can't be pursued.

1 THE COURT: I'm hoping I can pull it up real quick. I
2 don't think it says what you say.

3 MR. KURLAND: There is a line in there, which is the
4 government, I don't want to --

5 THE COURT: I don't think the letter uses the term --

6 MR. KURLAND: No doubt.

7 THE COURT: -- the government.

8 MR. KURLAND: Okay. Okay. It might not. Mr. Coburn's
9 magic box that has the letter -- does anybody have a solid copy
10 of the letter?

11 THE COURT: Okay. Here it is. I have it.

12 MR. KURLAND: And they were --

13 THE COURT: They serve me a grand jury subpoena,
14 misspelled, perhaps, I was mad as shit because I didn't know
15 nothing about nothing. You and blue pretty much know that but
16 when I got locked up they picked up my case and then --

17 MR. KURLAND: The next line, Judge.

18 THE COURT: And they were trying to get me to make up
19 shit on y'all because they think that y'all told me what was
20 going on. So I don't see the word "government" in this letter.
21 I suppose it would be a reasonable inference that by "they", he
22 was alleging something against law enforcement.

23 MR. KURLAND: I would agree that's a reasonable
24 inference.

25 THE COURT: Yeah. So it's an avowal of a lack of

1 knowledge in a general sense. But he doesn't, except in that
2 general sense, doesn't contradict himself.

3 MR. KURLAND: Well, he didn't say on the stand that the
4 government was trying to make him lie. That's not consistent
5 with his -- I just --

6 THE COURT: He doesn't say in the letter that the
7 government's trying to make him lie. He doesn't use the word
8 "government."

9 MR. KURLAND: Well, Your Honor, I understand that. But
10 in the context of the "they", that it's clear that, that it's not
11 only a reasonable inference, it's an overpowering inference that
12 the reference to they, because he's talking about, when I got
13 locked up, they picked up my case.

14 THE COURT: In fact, look at the next sentence, though,
15 or the next two sentences. They got so mad at me and said they
16 were going to call me into court when y'all go to court and I
17 told them that I was going to fuck their whole case up, parens,
18 that they didn't have any evidence and they were trying to set
19 y'all up.

20 So he's telling Mr. Gardner that that's what he's going
21 to do when he goes to court and he didn't do that.

22 MR. KURLAND: Your Honor, there's no need to have the
23 agents --

24 THE COURT: Okay. All right. So I haven't formally
25 authorized the warrant and I won't do so.

1 If he's available tomorrow and if he comes in, then you
2 can rethink this. But I'm not going to have him picked up.

3 MR. KURLAND: Thank you, Your Honor.

4 THE COURT: All right. What do we have left? Ms.
5 Rhodes, you still got telephone people standing by on hold?

6 MS. RHODES: I've got two witnesses out there, yes,
7 Your Honor.

8 THE COURT: They going to both be done in 20 minutes?

9 MS. RHODES: No.

10 THE COURT: 60 minutes?

11 MS. RHODES: Yeah.

12 THE COURT: It's going to take that long?

13 MS. RHODES: Well, no. You only gave me two options.
14 I'm going to be probably 13 minutes with each one. Mr. Harding,
15 God only knows.

16 THE COURT: All right. Who else we have out there?
17 That's it? Okay. Good. So hopefully we'll finish them today.

18 MR. LAWLOR: Judge excluded all of our witnesses.

19 THE COURT: I'm sorry?

20 MR. LAWLOR: I said you excluded all our witnesses.

21 THE COURT: You wish I had. With that, we'll stand in
22 recess.

23 (Recess at 4:00 p.m.)

24 THE COURT: All right. Get the witness in, please.
25 Get the jury in, please. Mr. Hanlon, Mr. Harding, I forgot to

1 ask. Would you, as soon as you get back to your office, please,
2 send me a Word copy of the indictment? Or Word Perfect copy,
3 preferably Word Perfect.

4 MR. HARDING: Word Perfect. I hope I can, Your Honor.
5 It's been a long time.

6 THE COURT: Yeah. Send me whatever you can muster up,
7 whether it's a third superseding or the second. I'd just like to
8 have it so I can plug it into my charge.

9 MR. HARDING: Okay.

10 THE COURT: If you can locate something. And counsel,
11 I intend to get into your, get into your computers, hopefully not
12 too late tonight, a draft of my proposed charge so that we can,
13 so that we can review it carefully tomorrow, so that when we have
14 opening, closing arguments on Wednesday morning, you will have a
15 very good idea of what I'll be saying to the jury on Thursday.
16 So if you can be near your computers tonight with lots of paper
17 in the printer, expect, expect the instructions.

18 (Jury enters the courtroom.)

19 THE COURT: You may call your next witness, Ms. Rhodes.

20 MS. RHODES: Thank you very much, Your Honor. I would
21 call Gavin Pinchback from Sprint to the phone, to the stand, Your
22 Honor.

23 THE COURT: To the phone. Mr. Pinchback, good
24 afternoon. Thank you for your patience today, sir. If you'll
25 stand and be sworn by the clerk.

1 GAVIN PINCHBACK, DEFENDANT MITCHELL WITNESS, SWORN

2 THE WITNESS: I do.

3 THE CLERK: Be seated. Speak directly toward the mike.
4 State your name and spell it for the record, please.

5 THE WITNESS: Yes. My name is Gavin Pinchback. That's
6 G-A-V-I-N. Last name is P-I-N-C-H-B-A-C-K.

7 DIRECT EXAMINATION

8 BY MS. RHODES:

9 Q Good afternoon. Thank you for waiting this afternoon.

10 A Good afternoon.

11 Q Can you give us your, can you give us your employer, please?

12 A Yes. I work for Sprint, a telecommunications company.

13 Q All right. And what are your responsibilities there?

14 A I'm the Manager of Subpoena Compliance, which means that I
15 run a group that receives and responds to legal demands served on
16 the company for customer records.

17 Q Okay. And where's your, where is your office located?

18 A It's Overland Park, Kansas.

19 Q And how long have you worked there?

20 A Eight years.

21 Q And what have your responsibilities been during those eight
22 years?

23 A For the last four years, I've been the manager of the
24 Subpoena Compliance Group. For four years before that, I was a
25 human resources manager.

1 Q Okay. And what about before you worked for Sprint?

2 A Before that, I worked as a regional loss prevention manager
3 for Circuit City and also a regional human resources manager for
4 Circuit City.

5 Q What kind of training have you had with Sprint in terms of
6 the work, the legal compliance for subpoenas?

7 A Everyone who comes into my department, including me, we have
8 an 11 week training program that details how to read Sprint
9 records, how to produce Sprint records. We also have advanced
10 training with what are called our RF engineers or radio frequency
11 engineers, certain classes that they all have to take and we all
12 have to take. We also have testimony training within my group
13 and also with our Sprint attorneys.

14 Q And were you working with the company in 2002?

15 A I was.

16 Q Are you familiar with records from 2002 in general?

17 A I am.

18 Q Okay. And have you had a chance to review the records we
19 provided you which were, in turn you had provided to the
20 government in response to their subpoena?

21 A I have.

22 Q Okay. I'd like to call your attention to pages, this is
23 Government Exhibit T-3, Pages Nine and Ten of that exhibit. And
24 I'm going to put a copy of Page Nine on the DOAR, Your Honor.
25 And I'm going to be marking on this, this is not the original

1 exhibit. So I'm going to make some marks on this as we go
2 through your testimony.

3 First of all, can you just tell us, make sure, I'll get
4 to the top of the page here so you can see that. Tell us what
5 we're looking at, please.

6 A This is a call detail record from a particular phone. And
7 actually, that phone number is 443-418-6204. It's a list of the
8 incoming and outgoing calls from a certain time period for that
9 phone.

10 Q Okay. And do you know from your, from the subpoena who this
11 phone was assigned to?

12 A I'd have to look at my notes.

13 Q Sure.

14 A This one was Jaquetta, or Jaquetta Smith.

15 Q All right. And just looking at the columns here, there's
16 duration. I take it that's in seconds?

17 A That is.

18 Q And is that how the bills show up as well?

19 A No. The bills are rounded to the, are rounded up to the
20 nearest minute.

21 Q Okay. That's not to gouge the consumer, of course, right?

22 A No.

23 Q And then what about the repoll column. What does that stand
24 for?

25 A The repoll is a number for a switch.

1 Q And what's a switch?

2 A A switch is a centralized point for a collection of cell
3 sites or cell towers. Kind of the central processing site for a
4 group of say 100 or 200 or 300 cell sites in a certain
5 geographical area.

6 Q So this would be less specific than a cell tower location?

7 A Oh, yes.

8 Q Okay. What, roughly what kind of geography or geographical
9 area would a repoll cover?

10 A Generally covers, like I said, about 100, 200, 300 cell
11 sites. So it might cover most of a city or a more rural area, a
12 very large, large area.

13 Q Okay. Now, on this, there's no indication of cell site
14 locations, is that right?

15 A That's correct.

16 Q And why is that?

17 A It was not either asked for correctly at the time or not, or
18 just not provided at the time.

19 Q Okay. And is that something that you, you could have
20 provided back in 2002?

21 A At the time that this was generated, yes.

22 Q And how would that show up or how was that accomplished now?

23 A Well, we use a very similar report now. However, there are
24 additional columns for cell site information if you requested
25 that.

1 Q So if that had been requested back in 2002, you could have
2 provided it to the government then?

3 A That's correct.

4 Q Okay. All right. And also, under repoll, the 400, does
5 that have any designation other than just the particular switch?
6 Does it give you any other information?

7 A No. Just that that's the switch.

8 Q And does it tell you whether or not, what kind of a call it
9 might be or whether it's limited to an actual live call or an
10 e-mail or text or something like that that?

11 A We use different switches for different types of calls. For
12 instance, on the majority of these calls it's 400, which is a
13 switch in the Baltimore/Washington, DC area. We do use other
14 switches called bulk messaging gateways for things like e-mail
15 and text. And that would show a different number even if it was
16 in this area.

17 Q Okay. I want to direct your attention down, a little bit
18 down the page, about two, two-thirds of the way down to just
19 before, just before 4:00 on March 24th of '02.

20 A Okay.

21 Q Okay. Just going from there all the way down to the end of
22 the page. I want to direct you to a number, which is the second
23 one there after the 4 p.m., after 4 p.m., which is a call that
24 comes in at 16:14:56. And the number, you indicated that the
25 number this phone is registered to is the 6204? Right? That's

1 the number that appears most of the time in that first number
2 column, right?

3 A That's correct.

4 Q Okay. The number that's being called in this instance is
5 the 443-227-0515, is that right?

6 A That's correct.

7 Q Okay. I'm going to highlight that number. And it appears
8 several other times on this page, is that right?

9 A Yes.

10 Q Or a variation, a minor variation of it. How many times do
11 you see it total on here? Can you just give me the total?

12 A The 0515 number appears five times, but there is one time
13 where it's actually 277-0515 instead of 227-0515.

14 Q Okay. So that's the one that's a slight variation?

15 A That's correct.

16 Q All right. Thank you. And I want to direct your attention
17 now to just a couple below, the one that starts at 17 -- sorry --
18 16:30:49. Looks like the number is dialing itself. What's that
19 about?

20 A Normally, when you check your voice mail, you call in to
21 your own phone. So it will show as the calling number and also
22 the called number.

23 Q Okay. So we call that a voice mail. And below that, what's
24 the blank about?

25 A In some cases, the numbers are not captured. On this older

1 report, we are missing a column that we currently use, which
2 would have the dialed digits, the actual numbers dialed into the
3 phone. Here we only have the called number field. And it
4 apparently wasn't captured in this case.

5 Q So the blank doesn't mean that nothing was dialed?

6 A No.

7 Q Okay. What about other possibilities, long distance,
8 overseas, going into somebody's pager? What about those things?
9 Could that be what this blank is about?

10 A It's possible.

11 Q And what are the other possibilities?

12 A It's possible that even that was a call in to voice mail.
13 Without some of the other columns on the page, it's hard to tell
14 exactly what happened with that call and why those numbers don't
15 appear.

16 Q Okay. But it looks like since the voice mail, since the one
17 just above goes to voice mail that, is that less likely that the
18 blank means voice mail?

19 A It could be.

20 Q And in terms of, you said, capturing numbers. Can you
21 explain what you mean by that, capturing numbers and how the new
22 system does that differently?

23 A Actually, the system captures thing in the same way. We
24 have a, essentially, the phone system is made up of a lot of
25 different computers and it captures all the numbers being dialed,

1 the numbers being received, those kind of things. However, we
2 use a different variation of the report now. And we have
3 expanded columns.

4 In this case, for instance, we don't have a dialed
5 digits column that I explained. I also referred to the cell site
6 tower columns that could be on here, if that is requested.

7 Q What about in terms of the blank? Could that be somebody
8 who just started a number, dialed four or five digits, and then
9 never finished dialing? Would it show up that way?

10 A It wouldn't show up unless that person actually hit the talk
11 button to try to complete the call. It could be that the call
12 was, the call was placed and then ended before contact was made.
13 But you would have to have hit the talk button to have it listed
14 on this list of calls. That's the start, start date and time
15 where you hit the talk button, that's where the timer starts.

16 Q Okay. But then if it hadn't gone through, that wouldn't
17 really explain, you've got seven seconds there and then down
18 below, where I'm pointing at, you've got the blank with 22
19 seconds and 21 and 16. So that doesn't seem consistent with a
20 partial number being dialed, does it?

21 A It's possible. But it seems that with that duration of
22 time, that it would have been connected to somebody.

23 Q Okay. Now, is there anything that can be done with the old
24 records from 2002 now to look into that further?

25 A Unfortunately, no, other than looking at the bills. On the

1 bills it might say the outgoing, who is the destination of the
2 outgoing call. But the records that produce this record are no
3 longer in existence.

4 Q Okay. All right. So I'm just going to ask you to do a
5 couple of quick totals here. From the 4 p.m. entry. Can you
6 tell me how many incoming and outgoing calls there are from 4
7 p.m. on down to the end of the page?

8 A There are 6 incoming calls and there are 15 outgoing calls.
9 And that begins at 16:07.

10 Q And so then the total for that column till the end, till the
11 bottom of the page is 21 calls total, right?

12 A That's correct.

13 Q And what about -- let's see. You had said earlier we have
14 five in that total. We've got five of the number which hasn't
15 been identified that ends in 0515, right?

16 A That's correct.

17 Q And how many of the blank ones do we have?

18 A We have four blank ones.

19 Q So five of the, five of the mystery number and four that are
20 blank are lost numbers, is that right?

21 A Five to the 0515 number and four to the blank number, yes.

22 Q Okay. So I'm labeling that mystery/0515. And four of the,
23 four for the lost number, then.

24 If we can go to the next page, Page Ten. Just want to
25 do a couple of the same totals there. This time going all the

1 way down to 7:35 a.m. in the morning, which is pretty near the
2 bottom.

3 A There's a call at 7:35 and 35 seconds. So are you including
4 that one?

5 Q No. No. Up to 7:35. So right before that one. So it
6 would be just after the 7:34:46.

7 A Okay.

8 Q Okay. So have you calculated the total number of calls on
9 that page up to, up to 7:30 a.m.?

10 A There are 46 calls.

11 Q And how many of those are incoming?

12 A Four of those calls are incoming calls.

13 Q And even though it may be obvious, but how do you tell which
14 are the incoming calls?

15 A The last column on the sheet is a column called role, and
16 that indicates whether it's an incoming or outgoing call. A one
17 means it's an incoming call be into the number that we ran the
18 report for, and a zero means it's an outgoing call, outbound from
19 that number.

20 Q Okay. And is it also just as certain a way of checking that
21 to look at the calling number? Does that work as well? Or is
22 the role really the way you should identify that?

23 A Role is really how you should identify it. But it should be
24 the, the number that we ran the search upon that shows up in the
25 calling number if it's an outbound call.

1 Q Okay. Then I'm going to ask you to, if you could again,
2 count up the 0515 numbers that show up on this page.

3 A There are four of those.

4 Q Okay. And then in terms of the lost numbers, how many of
5 those do you see?

6 A There are 14 blank called numbers.

7 Q Okay. And your total you had said was 46, which means four
8 were incoming, which you said. And 42 were outgoing, then?

9 A That's correct.

10 Q And the other possibilities regarding this blank space is
11 that there's some, there could be some kind of glitch either in
12 the cell phone itself or in your collection method, is that
13 right?

14 A It's possible.

15 Q Okay. Nothing further, Your Honor. Thank you.

16 THE COURT: Are you going to mark those?

17 MS. RHODES: Yes, Your Honor.

18 THE COURT: You want to staple them so they're a single
19 exhibit?

20 MS. RHODES: Have them as one.

21 THE COURT: So that's Mitchell number?

22 MS. RHODES: That's Mitchell Ten, Your Honor.

23 THE COURT: Mitchell Ten is admitted. All right.

24 CROSS EXAMINATION

25 BY MR. HARDING:

1 Q Good afternoon, Mr. Pinchback.

2 A Good afternoon.

3 Q My name's Robert Harding. I'm an assistant United States
4 attorney here in Baltimore. How are you?

5 A I'm doing well, thank you.

6 Q Thank you for traveling all this way to visit us. Be sure
7 to go to the Inner Harbor tonight.

8 A Okay.

9 Q I just have about two questions for you, Mr. Pinchback.

10 A Okay.

11 Q You said that some of these calls that are listed on here as
12 only seven seconds or so, those could actually be connected
13 calls, is that right?

14 A It's possible.

15 Q Because there are quite a few that are seven or eight
16 seconds or single digit calls. If you look just in the area
17 that, there's one that's only, there are a couple that are six
18 seconds and one that's three seconds. Could those actually be
19 conversations?

20 A I couldn't guess whether they were really conversations or
21 not, but they were connected on our network. The way it
22 registers on the network is that when someone hits the talk
23 button, as soon as it hits the network, as soon as the network is
24 aware of the call, it starts the timer. But it would not
25 indicate whether or not someone picked up on the other end for

1 certain.

2 Q So you really don't know whether those are conversations or
3 not?

4 A That's correct.

5 Q And the other question I have is, back in 2002, cell site
6 information was provided by, it could be provided by a court
7 order, is that correct?

8 A That's correct.

9 Q But not by an ordinary administrative subpoena, is that
10 correct?

11 A That's correct.

12 Q And it was fairly rare, wasn't it, back then, to, talking
13 about six years ago now, to get cell site information, is that
14 fair to say?

15 A Depends on what you consider rare. My office processes
16 quite a few, quite a few requests. As proportion of the total
17 requests, it was probably less then than it is now, yes.

18 Q Okay. Thank you. I have no further questions.

19 THE COURT: Mr. Pinchback, thank you very much. You're
20 excused.

21 THE WITNESS: Thank you, Your Honor.

22 THE COURT: I believe we have one more witness.

23 MS. RHODES: Yes.

24 THE COURT: Your witness, Ms. Rhodes?

25 MS. RHODES: Yes. The defense would call Mr. Ridenour.

1 THE COURT: Would you stand and be sworn, please, sir?

2 ERIC RIDENOUR, DEFENDANT MITCHELL WITNESS, SWORN

3 THE WITNESS: I do.

4 THE CLERK: Be seated. Speak directly toward the mike.
5 State your name and spell it for the record, please.

6 THE WITNESS: Eric Ridenour. Last name is
7 R-I-D-E-N-O-U-R.

8 DIRECT EXAMINATION

9 BY MS. RHODES:

10 Q Mr. Ridenour, thank you for joining us this afternoon. Can
11 you tell us who you're employed by?

12 A AT&T.

13 Q All right. And what do you do for AT&T?

14 A I'm the manager of sales operations.

15 Q And for what area?

16 A For the Washington/Baltimore market.

17 Q Okay. And how do you come to us today to respond to the
18 subpoena?

19 A I'm, I act as the custodian of records for our market.

20 Q And have you had a chance to review the records that we
21 received or the government received from AT&T regarding some 2002
22 records?

23 A Yes, I have.

24 Q All right. I'm going to -- now, before I do that. Can you
25 tell us a bit more about how long you've worked with AT&T and

1 what your duties are right now?

2 A I've been with AT&T for, it will be 16 years in February.
3 And I am responsible for the operations of our company-owned
4 retail stores, as well as our indirect agents. Consist of
5 customer service as well as managing and operating the retail
6 locations.

7 Q Okay. And are you familiar with reviewing AT&T records and
8 their, their other provider records as well?

9 A Yes.

10 Q Okay. Let me ask you first to start with explaining why
11 some of these exhibits have, even though you're from AT&T,
12 they've got other things on there like MCI. What's that about?

13 A Oh, on the subscriber record page?

14 Q I'm sorry?

15 A The subscriber record page? Is that what you're referring
16 to?

17 Q Yes.

18 A MCI acts as a reseller for AT&T.

19 Q Okay. So even it may say MCI on there, they're AT&T
20 records?

21 A Correct. They say AT&T wireless up top. I want to make
22 sure we're looking at the right ones.

23 Q I'm just talking in general right now. You have, AT&T has
24 records that go out that has other companies, to the lay person
25 seems like another company's name on it, is that right?

1 A Well, AT&T sends call detail records to the MCI, but it
2 would have, it wouldn't necessarily look as if it were an MCI
3 document.

4 THE COURT: Ms. Rhodes, if I may suggest. I think the
5 witness needs to see a document before he can answer your
6 question. And he just shook his head yes. It's kind of
7 difficult.

8 Q We were talking earlier about MCI being on, being on a bill
9 but it's AT&T records, right?

10 A The way a reseller works is the customer is the customer of
11 MCI. And AT&T, MCI purchases air time from AT&T. Our customer
12 is MCI and then MCI then goes out and sells to an individual. So
13 the end user receives a bill from MCI, not from AT&T.

14 Q Okay. I'm going to ask you to look at some of the records
15 you have up there. This is Government T-17. On that, can you,
16 can you turn to the page marked 560 in your records?

17 A Okay.

18 Q Okay. And what is the, what's the subscriber number on
19 this, for this record?

20 A 443-691-9203.

21 Q Court's indulgence.

22 THE COURT: Certainly.

23 Q I want to draw your attention to a couple of calls on here.
24 And we're looking at, the dates on this page are March 21st, is
25 that right?

1 A Correct.

2 Q In the middle of the page. Okay. And that's in 2002,
3 right?

4 A Correct.

5 Q Okay. You see just down about in the middle of the page,
6 there are some indications, under call location, under that
7 column it says Hackensack, NJ, right?

8 A Yes.

9 Q Okay. And do you see several of though entries?

10 A Yes.

11 Q Okay. So that simply means it's a long distance call to New
12 Jersey, is that right?

13 A It means that the exchange of the phone number that got
14 called was based out of Hackensack.

15 Q Okay. All right. And I want to, I'm going to switch up on
16 you a little bit here and go to another document, which is
17 Government's N-67. I think what you have in front of you is just
18 a list of handwritten phone numbers, which is a copy of N-67.

19 A Correct.

20 Q And does it have 410-905-1681 at the top?

21 A Yes.

22 Q Sorry. It's W-67. All right. And I'm going to ask you if
23 you could -- okay. On the left-hand column, about a third of the
24 way down, do you see the letters L-U-V-E, Luve?

25 A Yes.

1 Q Okay. And what's the number you see for him?

2 A 410-365-5446.

3 Q Okay. And if you could look up on the top of the right-hand
4 column, where it says Shabazz. What's the number there?

5 A 443-803-618.

6 Q And the last number you can't read?

7 A Can't read on this.

8 Q Okay. And then what about further down on that page, about
9 two-thirds of the way down? You see something that says D-E-Z-O.
10 Deezo?

11 A Yes.

12 Q And what's the number there?

13 A 443-621-7441.

14 Q Okay. All right. Now, turning the page. If I could take
15 you, again, we're in Government W-67. If you could go, let's
16 see, to the third page of that packet. There's a second to last
17 number on that page. It says Damita. Do you see that?

18 A Yes, I do.

19 Q Okay. And what's the number there?

20 A 410-262-0798.

21 Q Okay. And then on the next to last page, I think it's next
22 to last -- sorry, the third to the last page, there's just a
23 couple of names there. Do you see Tyrone? The second name
24 there.

25 A Yes.

1 Q Okay. And what's the number you have for him?

2 A 410-258-5407.

3 Q Okay. Now, I'd like to go through a couple of page here,
4 about two pages on this document, and then a couple on the other
5 one just to see if we can spot any of those numbers here.

6 If we could go first to Page 561. And at the top of
7 that page, what's the date? The date of the records, not the
8 date it's printed out.

9 A 3/22.

10 Q All right. And do you see that the number that you said was
11 Damita, the 262-0798, do you see that number on the page?

12 A Yes, I do.

13 Q Okay. And since I'm using the actual exhibit this time, I
14 am just going to use a temporary sticker on it. That's about,
15 what, the fourth one down, right? Okay. And do you see that
16 again, that same number on the page?

17 A Yes.

18 Q Okay. And where is that? Okay. Is that where the arrow is
19 indicated?

20 A Yes.

21 Q Okay. And does she appear another time on that page?

22 A Yes.

23 Q And are all, all three of these calls so far from, calling
24 to a location in Baltimore?

25 A They're calling to a mobile number with a Baltimore

1 exchange.

2 Q To a mobile number with Baltimore exchange?

3 A Right.

4 Q And is there another one you see again calling that Damita
5 number?

6 A Yes.

7 Q Okay. Let's turn the next page, Page 562. Any additional
8 Damita calls on that page that you notice?

9 A Yes. Further down on the page.

10 Q Again, is that calling a mobile number in Baltimore?

11 A It's calling a mobile number with a Baltimore exchange.

12 Q So it could actually be not in Baltimore, is that what you
13 mean?

14 A Yeah. I don't know where it's located.

15 Q Okay. All right. And then if we could skip a couple of,
16 skip a couple of pages. Okay. Let's go to Page 883. Okay. I'm
17 going to ask you about another number, too. You mentioned, you
18 mentioned the number for Shabazz earlier, which was the
19 443-803-618, and we couldn't read the last number. Do you see
20 that about midway down on the page? 443-803-6182?

21 A Which page number are we looking at?

22 Q 883.

23 A Yes.

24 Q Okay. And did you -- okay. On the next page as well, did
25 you come across that number again?

1 A Yes.

2 Q All right. And that's 803-6182 number?

3 A Correct.

4 Q And is that 443, also, a Baltimore exchange, and is that a
5 mobile number?

6 A That is a mobile number. I don't know what the exchange is.

7 Q Okay. And how about, about further down? Do you see that
8 number again, 11:21 -- sorry. 11:24 p.m.?

9 A Yes.

10 Q Okay. And then we have a couple of, a couple numbers below
11 that we have that Luv number that you gave us before. That was
12 the 365-5446, is that right?

13 A Yes.

14 Q And then again -- oh, that's the phone company. (Phone
15 ringing.) A couple, three down from the bottom, we have another
16 call for Shabazz or Deeze, which the 803-6182 number, right?

17 A Correct.

18 Q Okay. Now, one other, if you could, if you could go, let's
19 see, two more pages past that. I believe it is, where the top
20 time for March 24th is 5:05 p.m. Do you see that page?

21 A Yes.

22 Q There is no number on. Okay. And there's a number of calls
23 there, again, to the number that we had identified as Damita,
24 which is the 0798. Do you see those?

25 A Yes, I do.

1 Q Okay. And this call, beginning of page is 3/24. In fact,
2 all the calls on this entire page are March 24th, is that right?

3 A Correct.

4 Q Okay. So this call is being made from the 691-9203 number
5 and it's calling to the number identified with Damita, is that
6 right?

7 A Correct.

8 Q Okay. And the first call we see at this, on this page is at
9 6:15 p.m., right?

10 A Correct.

11 Q Okay. The next one down is at 6:39, is that right?

12 A Correct.

13 Q And then right after that, another one at 6:40, is that
14 right?

15 A Correct.

16 Q And then another one at 7:16?

17 A Correct.

18 Q And another one at 7:21, right?

19 A Correct.

20 Q Now, can you tell us anything about, I mean, looking at the
21 length of these calls, anything about whether they were connected
22 or voice mail or that sort of thing? Starting with the one at
23 the top, which is the higher one, the 6:15. How long was that
24 call?

25 A Approximately two minutes.

1 Q Okay. And that indicates, can you tell from anything on
2 this record whether it necessarily was a voice mail or a
3 connected call?

4 A The C on the call indicates it was connected.

5 Q The C -- I'm sorry. Where?

6 A The C under Column I.

7 Q Okay. That's the very last column, right?

8 A Correct.

9 Q Right there. All right. And then further down, the next
10 one, which is the 6:39. One minute call. And did that one go
11 through?

12 A That was connected, also.

13 Q Okay. And was about at 6:40?

14 A It was connected. Indicator indicates dropped.

15 Q So D means it connected and then dropped?

16 A Correct. It was a dropped call.

17 Q Okay. And how about the one at 7:16?

18 A I'm not sure what the I indicates.

19 Q It says it was 0.0 in terms of time. So would that, does
20 that I mean nothing?

21 A Incomplete.

22 Q Incomplete. Okay. And then the last one there is at 7:21.
23 Another 0.0.

24 A Also incomplete.

25 Q And also I. So presumably that one didn't go through,

1 either, is that correct?

2 A That looks correct.

3 Q Okay. So the calls, whether completed or not, to Damita on
4 that page, then we've got five. And those are between the hours
5 of 6:15 p.m. and 7:21 p.m. on March 24th, is that right?

6 A Correct.

7 Q Okay. And the other calls -- take this off so it doesn't
8 make everybody seasick. The other group of Damita calls we saw
9 were on the 23rd -- I'm sorry. All right. On Page 561, do you
10 have that?

11 A Yes.

12 Q Okay. And how many calls did you see to her on that page?

13 A Four.

14 Q Okay. And those were between the hours of 12:30, 12:33 p.m.
15 and 3 p.m.?

16 A Correct.

17 Q All right. I want to direct your attention now to another
18 batch, which is just one page of this, 869. Page 869. Again,
19 part of T-17. I hope you can find it because I'm not sure I can.

20 A I have it.

21 Q Okay. And do you have, do you see any, or the number that
22 we had associated with Luve on that page? That was the 365-5446.

23 A Yes.

24 Q Okay. So we have that. And this is, again, this is the
25 morning of March 23rd. So we've got a call to him at 2:17 a.m.,

1 the morning of March 24th. I said that wrong. 2:14 a.m. Two
2 calls initially. And then we had further down, at 3:53 in the
3 morning, a couple of calls again to that same number, right,
4 5446?

5 A Correct.

6 Q And then a batch of calls to another number, which you and I
7 have not talked about, the 5057 number, right? And those, again,
8 are calls at 3:56 in the morning, 3:56, 3:57, right?

9 A Correct.

10 Q How many calls -- did you have a chance to notice how many
11 calls there were total between midnight and 4 a.m. on the 24th?

12 A Fifteen.

13 Q Okay. Thank you. No further questions, Your Honor.

14 MR. HARDING: Mr. Ridenour, thank you very much for
15 coming here. I don't have any questions for you.

16 THE WITNESS: Thank you.

17 THE COURT: Mr. Ridenour, thank you very much, sir.
18 You're excused. Ladies and gentlemen of the jury, here's what I
19 can tell you about the upcoming schedule.

20 I anticipate that we will conclude all of the evidence
21 tomorrow. I anticipate that the defense evidence will conclude
22 about midday, perhaps a little before lunch, perhaps a little
23 after lunch. Thereafter, if it chooses to do so, under our rules
24 and practice, the government is permitted to offer what's
25 referred to as rebuttal evidence that, frankly, does not happen

1 very often. And in those rare occasions when it does, it's very
2 short and abbreviated. Because the government has the burden of
3 proof in a criminal case, it does have a final opportunity, if it
4 chooses to do so, to offer evidence to rebut any evidence that
5 may have been introduced by the defense.

6 So I don't know if the government will choose to do
7 that. But again, if they choose to do that tomorrow, Mr.
8 Harding, Mr. Hanlon, will let me know. And I assure you, it will
9 be fairly brief.

10 So I expect that you will be excused, I think, probably
11 at the latest by mid-afternoon tomorrow, perhaps a little later
12 rather than a little earlier. But certainly, I anticipate that
13 all of the evidence will conclude by the end of the day tomorrow.

14 We'll resume on Wednesday morning with what I expect
15 will be a full day of closing argument. You will recall that
16 closing argument is not a part of the evidence in the case but it
17 is a very important part of the case, particularly in a case of
18 this length, in which the attorneys have the opportunity to
19 summarize the evidence, to marshal it, to walk you back through
20 the witnesses and the exhibits that you've heard, and try to give
21 you a coherent vision of what each attorney thinks the case shows
22 and what you should be persuaded of.

23 Obviously, as I've said, what counsel say in closing
24 argument is not part of the evidence. And it's for you and you
25 alone to decide what the facts are, who to believe, what to

1 believe, what weight to assign to any evidence. But the closing
2 arguments, I'm sure, will be very helpful to you.

3 I don't anticipate that we will finish all of the
4 closing arguments before the end of the day on Wednesday. And so
5 what I actually anticipate is that on Thursday morning, again,
6 presuming we start at about 9:30, Mr. Kurland will probably
7 present his closing argument, and then the government will have
8 an opportunity for a rebuttal closing argument, just as the
9 government has an opportunity to put on additional evidence if it
10 chooses after the defense have presented evidence, the government
11 has an opportunity to present additional argument to respond to
12 any arguments that might be made by the defense, but not to make
13 any new arguments.

14 So I anticipate that by late morning on Thursday you
15 will have had all of the evidence and all of the closing
16 arguments.

17 Either just before lunch or after lunch or maybe with
18 lunch in between, I will instruct you on the law. Now, what I am
19 planning to do for the instructions is to give each of you a copy
20 of my instructions even before I begin reading them to you so
21 that you can follow along if you choose, and indeed, make notes
22 in the margins of my instructions if that should prove helpful to
23 you.

24 Right now, I anticipate that my instructions may well
25 take as many as, I don't know, three hours perhaps. Perhaps a

1 little less. Perhaps a little longer. They haven't been
2 finalized yet. But it will take some time because of the number
3 of charges and the relative complexity of the charges in this
4 case.

5 So with that, I'm anticipating that you will be able to
6 begin deliberations, I think, mid to late afternoon on Thursday
7 of this week.

8 Now, this is all my best hope in terms of how I think
9 things are going to go and just to give you an idea. And then you
10 will return on Friday and, as needed, in the subsequent days to
11 complete your deliberations.

12 So continue to keep an open mind about all issues. You
13 haven't heard all of the evidence. You haven't obviously heard
14 any closing arguments. You haven't heard but a few of my
15 instructions on the law that will guide your deliberations.

16 Please leave your note pads in your chairs. Have no
17 discussion about the case. Conduct no investigation of any sort.
18 Continue to avoid any media, any exposure to media reports about
19 the case.

20 We'll look for you tomorrow morning at 9:30 to resume
21 the trial at that time. Thank you, ladies and gentlemen. You
22 are excused until 9:30 tomorrow morning.

23 (Jury exits the courtroom.)

24 THE COURT: So, Ms. Rhodes, you'll have who tomorrow?

25 MS. RHODES: Coach Lynch. No, just kidding. Davey D

1 is here from California. So he would be our first witness,
2 barring something else urgent. And then we have records from
3 several schools. I don't know if this Coach Powers, he's only
4 available on Wednesday. So I don't know if he's going to be
5 available to do anything via TV tomorrow. But I will look into
6 that shortly.

7 We have Detective Niedermeier and a Police Officer
8 Seymour, who will be very brief, just about a page of the report
9 having to do with Hammerjacks case.

10 And we have somebody from a, from Solo Cup, an
11 employer. And again, just the records.

12 THE COURT: Okay. Mr. Martin? Just records?

13 MR. MARTIN: Just records, Your Honor.

14 THE COURT: Okay. And they're coming in by
15 certificate?

16 MR. FLANNERY: Yes. Your Honor, we have, one is a
17 police report from Detective Laslett that the government has
18 stipulated to introducing. It's simply an itemization.

19 THE COURT: You don't have to tell me what it is. I
20 just need to hear about the problems.

21 MR. FLANNERY: The other record we have, and maybe it
22 is or it isn't a problem. If you remember during Mr. Martin's
23 cross examination of Mr. Dobropolski, he was working off of some
24 public records of Mr. Dobropolski's institutional movement that
25 we would like to introduce for the matter that he was locked up,

1 showing the dates that he was locked up in the institutions that
2 he was locked up at. And particularly, also on some of these
3 documents, it cites the address that he listed at the time of his
4 incarceration.

5 And the reason for that, Your Honor, is because of Mr.
6 Dobropolski's insistence on his reputation in Park Heights as
7 being an enforcer and having grown up there and been there and
8 that he was known on the streets as being there. And it's our
9 contention, Mr. Dobropolski already acknowledged that he had only
10 been on the streets for the better part of sixty-some months in
11 his entire adult life. But much of that was, according to these
12 records, what not at the time that he would have been growing up,
13 so to speak, in Park Heights, and also, according to many of
14 these records, that he wasn't even living in Park Heights.

15 THE COURT: So let me see if I get this. You want to
16 impeach --

17 MR. FLANNERY: Not his character.

18 THE COURT: Right. I understand. It's not going to
19 character. You want to impeach his testimony insofar as he
20 claims to have had a reputation in the Park Heights community for
21 being a tough guy and/or enforcer by introducing records from,
22 are they all Division of Corrections or Baltimore County,
23 Baltimore City? Anne Arundel?

24 MR. FLANNERY: Many of them are from Division of
25 Corrections. There are some Baltimore County. There are some

1 Baltimore City. There is certain, in order to get his initial
2 arrest date in '89, there's a true test copy of a CJS sheet.

3 THE COURT: Okay. But your point, if I'm following
4 this, your point is that you want to not prove where he lived
5 but -- here's what I think you're saying. You want to show how
6 often he was locked up. He's already testified that he was only
7 on the street five years. So you want to try to put some meat on
8 that. And you want to show that when he wasn't locked up,
9 according to Division of Correction records, he was apparently
10 giving the address, an address somewhere other than in Baltimore,
11 Park Heights. Is that right?

12 MR. FLANNERY: Yes. And also, there's one final point,
13 is that for a large swath of time that these individuals,
14 particularly Mr. Harris, would have been in Park Heights, that he
15 was locked up for that, for the majority, if not all of that time
16 as well.

17 THE COURT: Okay. So is the government objecting?

18 MR. HARDING: Very much so, Your Honor. Rule 608(b)
19 says that that specific instances of the conduct of a witness for
20 the purpose of attacking or supporting the witness' character for
21 truthfulness, other than conviction of a crime as provided in
22 Rule 609, may be not proved by extrinsic evidence.

23 THE COURT: But it's not character for truthfulness.

24 MR. HARDING: I think they're attacking his testimony
25 about his reputation in Park Heights, his living in Park Heights

1 and knowing Park Heights' drug dealers. That's what the point of
2 this appears to be. It is impeachment in the classic sense.

3 THE COURT: It's impeachment but it's not character for
4 truthfulness. There's a distinction. Okay. Clearly,
5 impeachment on a collateral -- extrinsic impeachment on a
6 collateral issue is not allowed. And I take it, Mr. Flannery,
7 your position is this is not a collateral issue?

8 MR. FLANNERY: One, it's not a collateral issue. And
9 it's really outside the rule, Your Honor, because we're not
10 impeaching his character for truthfulness.

11 THE COURT: I understand that. You're not impeaching
12 his character. You're impeaching his testimony.

13 MR. FLANNERY: Yes.

14 THE COURT: Now --

15 MR. FLANNERY: Can I say one other thing?

16 THE COURT: Sure.

17 MR. FLANNERY: We also have, just so you have a
18 complete picture. We have, our paralegal, the documents are
19 here. But our paralegal has created this summary chart that I'm
20 working off of.

21 THE COURT: Do you have a copy that I can take with me
22 tonight and look at it?

23 MR. FLANNERY: Sure.

24 THE COURT: Okay. Let me take a look at it. I'll hear
25 some argument on this. It sounds sort of like a stretch but

1 maybe it's not. I mean, maybe it's not. I mean, it's an awful
2 lot of pieces of paper. And I guess you need a lot of pieces of
3 paper when you don't have a witness. But other than --

4 MR. FLANNERY: Really what we wanted to do, Your Honor,
5 we were seeking to admit it so that we could make particular, so
6 that we could corroborate, you know, certain arguments that,
7 really, that we would make. If we had to, we would bring in our
8 paralegal to authenticate the summary.

9 THE COURT: Well, but there's so much -- forgive the
10 use of the term -- garbage here. If all you're interested in is
11 where he lived or where he, where he told DOC he lived, assuming
12 that the DOC records are based on what he told them as opposed to
13 what shows up in some J&C when he got convicted, it's going, it's
14 going to be tough for me to admit, to give this to the jury on
15 top of everything else.

16 So have you tried to reach a stipulation? I mean, I
17 would think the stipulation on the -- again, he's already said he
18 was only on the street for five years. So you don't need to
19 prove that.

20 MR. MARTIN: It's years, the timing.

21 MR. FLANNERY: It's really, like I said, Your Honor,
22 it's the particular years. A is the timing. He was locked up
23 for many of the particular years that Mr. Harris would have been
24 in Park Heights. That's one. Two --

25 THE COURT: What's the point of that? It was --

1 MR. FLANNERY: Because, Your Honor --

2 THE COURT: It was when Mr. Harris and he were not
3 locked up that the relevant evidence --

4 MR. FLANNERY: When he was locked up -- Your Honor,
5 even the Court itself was surprised by the fact that Christopher
6 Dobropolski, an obviously --

7 THE COURT: A white guy.

8 MR. FLANNERY: Caucasian Polish living in Park Heights.

9 THE COURT: No. I didn't say he lived in Park Heights.
10 I don't think the record's going to reflect that.

11 MR. FLANNERY: You questioned that he was from, that he
12 stated he was from Park Heights. And not only is he from Park
13 Heights, but he's a well known enforcer that, you know, tooled
14 around with drug dealers and was beating people up in the Park
15 Heights area. And that Mr. Harris knew him and that's the reason
16 that Mr. Harris was so inclined to then, you know --

17 THE COURT: See, now it's going to sound like
18 impeachment on a collateral issue. Okay? I'll look at it. I'll
19 look at it and I'll hear counsel. Anything, Mr. Pyne, Mr. Crowe?

20 MR. CROWE: Your Honor, I believe all we will have will
21 be a few exhibits to move in.

22 THE COURT: Okay. Any of them controversial?

23 MR. CROWE: I don't believe so, no.

24 THE COURT: I really would really like to start with
25 the jury at 9:30 tomorrow. I don't know that we've ever done it.

1 You know, it would be really great. It would be really, really
2 great. You would all make me feel so good --

3 MR. LAWLOR: Why start now, Your Honor?

4 THE COURT: -- if we could actually bring the jury out
5 here at 9:29 and 30 seconds.

6 MR. KURLAND: I think there was one or two days when we
7 got started right at 9:30. Your Honor --

8 MS. RHODES: Your Honor, I do have, also, about a 20
9 minute witness from MVA who will be --

10 THE COURT: MVA?

11 MS. RHODES: MVA, yes.

12 MR. KURLAND: Your Honor, we just have some documents
13 that there should be no controversy over. And I'm going to look
14 at the grand jury transcripts. I think the only one that affects
15 us is Reynolds. But I think that that was one that was on your
16 list, anyway. And we'll just designate the areas.

17 The other thing, Your Honor, is I have, is I'm going to
18 talk to the government afterwards to see if they will agree to
19 the exhibits I want to use during my demonstrative --

20 THE COURT: Yeah. Share.

21 MR. KURLAND: If there's a controversy, that's
22 something that, obviously, I'll have to take up with the Court.

23 THE COURT: Absolutely. Share your argument exhibits,
24 please, and bring them to my attention hopefully before the end
25 of the day tomorrow. Yes, Mr. Harding? Brief rebuttal case, if

1 any?

2 MR. HARDING: Oh --

3 THE COURT: As of right now.

4 MR. HARDING: We have to discuss that. I can't say
5 right now.

6 THE COURT: All right.

7 MR. HARDING: But I do want to point out that Ms.
8 Rhodes showed me some documents. I don't know if she's still
9 intending to get them into evidence. But I did not agree with
10 all of those documents. She wanted newspaper articles in about
11 her client's football exploits and ones that mention Coach Lynch.
12 And things like records of his character evaluation that was done
13 when he applied for some kind of position with a sports program
14 of some sort. And I think that it's --

15 THE COURT: Okay. I would hope, I would hope that the
16 direct and cross will be similar to what we had tonight. That is
17 to say, very brief, and that we'll have plenty time tomorrow, and
18 I can hear counsel about some of these documents that the defense
19 want to put in. Just please premark them. Have them marked,
20 numbered, so that we can go through it pretty expeditiously. And
21 I'll give you my rulings. And I'll see you tomorrow morning at
22 9:30.

23 MR. KURLAND: Your Honor, one last thing. I apologize,
24 Your Honor. With regard to the scheduling, because I want to
25 have some of the students come down because it's near their

1 finals, can I say with fair certainty that I'll be doing mine on
2 Thursday morning?

3 THE COURT: Absolutely. That's what I told the jury.

4 MR. KURLAND: Okay. I apologize, Your Honor.

5 THE COURT: Sure.

6 (Conclusion of Proceedings at 5:30 p.m.)
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REPORTER'S CERTIFICATE

I, Mary M. Zajac, do hereby certify that I recorded stenographically the proceedings in the matter of USA v. Willie Mitchell, et al., Case Number(s) AMD-04-029, on November 17, 2008.

I further certify that the foregoing pages constitute the official transcript of proceedings as transcribed by me to the within matter in a complete and accurate manner.

In Witness Whereof, I have hereunto affixed my signature this _____ day of _____, 2009.

Mary M. Zajac,
Official Court Reporter

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